



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, शनिवार, 5 सितम्बर, 2009/14 भाद्रपद, 1931

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla-2, the 1st September, 2009

No. Sharm (A) 7-1/2005 (Award) Pt. file.—In exercise of the powers vested in him under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of the following awards announced by the Presiding Officer, Labour Court, Shimla in Rajpatra, H.P.:—

Sr. No.	Case No.	Title of the Case	Date of Award
1.	73/2005	S/Shri Sohan Lal & Ors. Vs. XEN, HPSEB, Nahan, District Sirmour.	23-4-2009
2.	80/2002	Jaggi Ram Vs. Deputy Director, Agriculture, Nahan, District Sirmour.	23-4-2009
3.	9/2005	Mohd. Ali Vs. Deputy Director, Agriculture, Nahan	23-04-2009

4.	106/2004	Tek Chand Vs. DFO, Forest Division, Rajgarh	6-4-2009
5.	134/2004	Yogeshwar Dutt Vs. DFO, Forest Division, Rajgarh	26-2-2009
6.	180/2001	Mangat Ram Vs. Secretary, HPSEB & Ors.	20-4-2009
7.	162/2002	Bahadur Singh Vs. Secretary, HPSEB & Ors.	20-4-2009
8.	129/2004	Vidya Devi Vs. Member Secretary, State Legal Services Authority, Craig Garden, Shimla-2.	20-4-2009
9.	175/2003	Asha Chauhan Vs. XEN, HPSEB, Kushang Construction Circle, Jeori, Rampur.	17-4-2009
10.	18/2005	Rewa Dass Vs. XEN, HPPWD (B&R) Division, Kumarsain, Shimla	17-4-2009
11.	109/2002	Lekh Ram Carpenter Vs. Regional Manager, HRTC, Rampur, Shimla.	17-4-2009
12.	295/2003	Prem Chand Vs. XEN, I&PH, Solan.	30-4-2009
13.	14/2006	Surinder Singh Vs. EXN, HPSEB, Rampur	6-4-2009
14.	116/98	Rajesh Bhaik Vs. Project Manger, M/S NJJV Kotla, Rampur.	20-4-2009
15.	280/2003	Ramesh Chand Vs. XEN, HPSEB (Electrical), Division, Solan.	27-4-2009
16.	7/2003	General Secretary, Ozone Pharmaceuticals PVT. Ltd. Vs. M/S Ozone Pharmaceuticals Pvt. Ltd.	6-4-2009
17.	225/2003	Surinder Kumar Vs. XEN, HPSEB, Division, Sunni, Shimla & Ors.	6-4-2009
18.	35/2005	Jagat Singh Vs. M/S Surya Patteries, Kala Amb, District Sirmour.	30-4-2009
19.	43/2006	General Secretary, Ministerial Staff Union, Nahan Foundry, Nahan Vs. XEN, HPPWD & IPH State Workshop, Nahan.	23-4-2009
20.	26/2005	Dina Nath Vs. XEN, I&PH, Division, Sunni, District Shimla.	27-4-2009
21.	190/2002	Parma Nand Vs. XEN, Irrigation & Public Health Division, Nerwa, Chopal, District Shimla.	27-4-2009
22.	58/2003	Hakam Chand Vs. XEN, HPSEB, Parwanoo	9-4-2009
23.	59/2003	Prem Chand Vs. XEN, HPSEB, Parwanoo	9-4-2009
24.	60/2003	Pyare Lal Vs. XEN, HPSEB, Parwanoo	9-4-2009

This supersedes the earlier notification of even number dated 17-7-2009.

By order,
Sd/-
ACS (Lab. & Emp.)

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP. AT CAMP COURT NAHAN**

Ref no. 73 of 2005.
Instituted on 8.8.2005.
Decided on. 23.4.2009.

1. Sohan Lal S/o Shri Ram Krishan, R/o Village Bankala, P.O Shambhuwala, Tehsil Nahan, District Sirmour, HP.
2. Tej Bir Singh Tomar S/o Shri Albel Singh Tomar R/o Village Bhenbhi Banot P.O Birla, Tehsil Nahan, District Sirmour, HP.

..Petitioners.

Vs.

The Executive Engineer, HPSEB Nahan District Sirmour, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioners : Shri A.K Gupta, Ld. Csl.
For respondent : Shri Kuldeep Rathore, Ld. Csl

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of Shri Sohan Lal S/o Shri Ram Krishan and Shri Tej Bir Singh Tomar S/o Shri Albel Singh Tomar, workmen by the Executive Engineer, HPSEB Division Nahan, District Sirmour, HP w.e.f. 20.7.1988 and 25.5.1993 without complying with the provisions of Industrial disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. The petitioner Shri Sohan Lal has filed a separate claim asserting therein that he was serving as daily waged T-Mate under the respondent and has completed 240 days of service with the respondent but the services of the petitioner were dispensed with by the respondent and the petitioner requested for his reengagement several times but in vain and that the termination of the services of the petitioner is bad as no notice was given nor any compensation was paid to the petitioner which is against the provisions of section 25-F of the Industrial disputes Act, 1947 and that if the petitioner had not completed 240 days of service then the respondent was bound to serve ten days notice on the petitioner before disengaging the services of the petitioner and that after the disengagement of the services of the petitioner several new recruitments have been made by the respondent violating section 25-H of the Industrial disputes Act, 1947 and as such the action of the respondent is unjustified, arbitrary and against the mandatory provisions of law, hence prayed for reinstatement with all consequential benefits alongwith full back wages and as such this claim.

3. Petitioner Shri Tejbir Singh has also filed a separate claim asserting therein that the petitioner was working under the respondent whose services were dispensed with by the respondent without issuing any notice and without giving retrenchment compensation and the respondent has not complied with the provisions of Industrial Disputes Act, 1947 and the work and conduct of the petitioner has been appreciated by the respondent and that the services of the petitioner have been dispensed with in an illegal manner without following the law and that the respondent while dispensing with the services of the petitioner has not issued any notice under section 25-F of the Industrial disputes Act, 1947 and even after disengagement of the services of the petitioner, the respondent engaged fresh hands in violation of section 25-H of the Industrial Disputes Act, 1947 and as such prayed for reinstatement with all consequential benefits including back wages.

4. The respondent resisted and contested the claim of the petitioners, which filed separate reply interalia raising preliminary objections that the petitioner has no enforceable cause of action against the respondent and that the application is bad for want of better particulars, delay and laches, estoppel and the respondent has been exempted from the standing orders. On merits, it is contended that the petitioners were engaged as casual workmen, who were never engaged against permanent job, hence the claim of the petitioners does not fall under section 25-b (i) of the Industrial disputes Act, 1947 and that the petitioners were never terminated by the respondent, who left their job of their own, who never worked continuously in a calendar year with the respondent and even no recruitments have been done by the respondent except those in which the court has passed the orders for reengagement and as such prayed for the dismissal of the claim as prayed for.

5. Rejoinder on behalf of petitioner no.2 Shri Tej Bir Singh Tomar filed wherein he controverted the assertions made in the reply reaffirmed and reiterated the averments of the petition. No rejoinder on behalf of Sohan Lal filed. The following issues were framed by this Court on 8.8.2007.

1. Whether the services of the petitioners are illegally terminated by the respondent w.e.f. 20.8.1998 and 20.5.1993 without complying the provisions of the Industrial Disputes Act, 1947? If so, its effect?
.....OPP
2. If issue no.1 is proved in affirmative, to what relief the petitioners are entitled to?
....OPP
3. Whether the petitioner has no locus standi to file the present petition?
.....OPR
4. Whether the present petition is not maintainable and is barred by limitation?
....OPR
5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under: —

Issue no.1	Partly yes and partly no.
Issue no. 2	Petitioner shri Sohan Lal is intitled for reinstatement alongwith seniority and continuity but without back wages whereas the petitioner Shri Tej Bir Singh Tomar is not entitled to any relief.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference partly answered in affirmative and partly in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1:

8. Coming to this issue, the petitioner Shri Tej Bir Singh appeared into witness box as PW-1, who has stated that he was engaged in 1982 by the respondent and worked till 1993, who was working on the HT/LT line and there was no complaint about his work, who worked for more than 240 days in a calendar year and the persons S/Shri Anil and Preetam Singh who engaged with him were regularized. No notice nor compensation has been given to him at the time of his removal and as such prayed for reinstatement in service with all consequential benefits including back wages.

9. In rebuttal, the respondent has failed to produce his evidence despite having afforded several opportunities to produce its evidence, hence the evidence of the respondent was closed by the order of the Court on 23.10.2008.

10. The case of the petitioners is that they being the daily wages beldars having worked for more than 240 days in each calendar year preceding their termination and their termination without notice and compensation is illegal and even juniors to them are still continuing with the respondent department and as such they are entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioners were engaged as casual labour for specific period only for seasonal work whose services were never terminated by the respondent, who left the job of their own, hence the petitioners are not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner Shri Sohan Lal was engaged by the respondent in the year 1986 as beldar, who worked for 329 days in 1986, 164 days in 1987 and 176 days in 1988 as per annexure R-1 filed by the respondent with its reply placed on record. No doubt Shri Sohan Lal did not appear in the witness box but his mandays chart was admitted by the respondent in para no.2 (a&b) of the reply which is reproduced as under :

**“The copy of list of days is annexed
herewith as annexure R-1”**

The perusal of annexure R-1 clearly shows that Shri Sohan Lal petitioner has completed 329 days in 1986, 164 days in 1987 and 176 days in 1988 which has not been disputed by the respondent. Whereas petitioner Shri Tej Bir Singh Tomar had worked with the respondent for 59 days in 1985, 79 days in 1987 as per annexure R-1 filed by the respondent with its reply placed on record and obviously therefore, it is clear from annexure R-1 of Tej Bir Singh Tomar that he had not completed 240 working days in any calendar year preceding his termination. It remains a fact that the petitioner Shri Sohan Lal had put in more than 240 working days in a calendar 1986 preceding his termination. Apart from it, the respondent has also tried to establish on record that the petitioners themselves abandoned the job but there is nothing on record which could go to show that the petitioners abandoned the job of their own. It is not proved on record by the respondent that the petitioners themselves left the job of their own. It is well settled incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to the above cited ruling, and keeping in view the entire evidence on record, it can safely be concluded that the petitioners have not left the job of their own.

14. The respondent has also tried to establish on record that the petitioner Shri Sohan Lal has not completed 240 working days in a calendar year preceding his termination. It is well settled incase titled as **State of HP & Ors Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. The perusal of this ruling, makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination, that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner Shri Sohan Lal has proved on record that he had worked for more than 329 days in a calendar year 1986 as is evident from annexure R-1 while petitioner Shri Tej Bir Singh Tomar could not prove on record that he had completed 240 working days in any calendar year preceding his termination. Moreover, no notice nor any compensation was given to the petitioner Shri Sohan Lal at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner Shri Sohan Lal by the respondent at the time of his termination and as such the services of the petitioner have been illegally and wrongly terminated by the respondent without complying the provisions of the Industrial Disputes Act, 1947.

16. Now, turning to the legal aspect of the case, the respondent has failed to prove on record that it has served a notice under section 25-F of the Industrial disputes Act, 1947 and also failed to pay retrenchment compensation to the petitioner Shri Sohan Lal on completion of more than 240 working days which is mandatory under section 25-F of the Industrial Disputes Act, 1947 before retrenching the petitioner Shri Sohan Lal from service which is illegal and improper, hence it is clear that the respondent has failed to give proper and legal notice to the petitioner Shri Sohan Lal under section 25-F of the Industrial Disputes Act, 1947 as no one month notice nor compensation was given to the petitioner Shri Sohan Lal having completed 240 working days in a calendar year 1986 at the time of his termination which are the conditions precedent under section 25-F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by the **Hon’ble Supreme Court incase titled as Utranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95** in which it was held that :

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

17. Thus, having regard to the entire evidence on record , the petitioner Shri Sohan Lal has proved on record that he had put in 329 working days in a calendar year 1986 preceding his termination and moreover, no notice nor any compensation was given to the petitioner Shri Sohan Lal at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner Shri Sohan Lal by the respondent at the time of his termination and as such the services of the petitioner Shri Sohan Lal have been illegally and wrongly terminated by the respondent without complying the provisions section 25-F of the Industrial Disputes Act, 1947. Whereas the services of the petitioner Shri Tej Bir Singh have rightly been terminated by the respondent as he has failed to prove on record that he has put in more than 240 working days in any calendar year preceding his termination. Accordingly, issue no.1 is partly decided in favour of petitioner Shri Sohan Lal only and against the respondent.

Issue No.2:

18. Since I have held under issue no.1 above, that the services of the petitioner Shri Sohan Lal have been illegally terminated by the respondent without complying with the Industrial Disputes Act, 1947, hence the petitioner Sohan Lal is held entitled to be reinstated in service with continuity and seniority. However, the petitioner Sohan Lal is not entitled to any back wages as he has not placed any material on record that he was not gainfully employed after his termination. Accordingly, issue no.2 is partly decided in favour of petitioner Sohan Lal only and against the respondent.

Issue No.3:

19. In support of this issue, no evidence was led by the respondent being the legal issue. Since the petitioners have been terminated from service by the respondent and they being the deprived from sence & being aggrieved workmen having locus standi to file this claim petition against the respondent. Accordingly, issue no.3 is decided in favour of petitioners and against the respondent.

Issue No .4:

20. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form and there is no limitation under the I.D Act as it was held by their lordship of **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.** in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation and is perfectly maintainable in the present form. Accordingly, issue no.4 is decided against the respondent and in favour of the petitioner.

Relief :

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioners partly succeeds and is hereby partly allowed and as such the reference is answered partly in affirmative and partly in negative and the petitioner Sohan Lal is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner Shri Sohan Lal is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Whereas the claim of the petitioner Shri Tej Bir Singh is dismissed. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd Day of April 2009 in the presence of parties counsels at camp court Nahan.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABUR COURT, SHIMLA, HP. AT CAMP COURT NAHAN

Ref no. 80 of 2002.
Instituted on 4.3.2002.
Decided on. 23.4.2009.

Jaggi Ram S/o Shri Banta Singh R/o Village & P.O Bhagani, Tehsil Paonta Sahib, District Sirmour, HP.

..Petitioner.

Vs.

Deputy Director, Agriculture Nahan District Sirmour, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Shri Jaggi Ram S/o Shri Banta Singh w.e.f. Feb. 1995 by the Deputy Director of Agriculture, Nahan District Sirmour, HP without compliance of section 25-F of the Industrial disputes Act, 1947 is legal and justified? If not, what relief of service benefits and amount of compensation Shri Jaggi Ram is entitled to?”

2. The petitioner has filed a claim asserting therein that he was engaged as daily waged beldar in agriculture farm Bhagani in the year 1980 and continued as such upto 1995 and then the services of the petitioner were orally terminated without complying with the mandatory provisions of the Industrial Disputes Act, 1947 and while disengaging the services of the petitioner, the principle of last come first go has not been followed by the respondent and the persons junior to the petitioner are still working and even fresh recruitments were also made in violation of section 25-H of the Industrial Disputes Act, 1947 and that the petitioner met the respondent many times regarding his grievances but in vain and as such prayed for reinstatement with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of delay and latches, maintainability and the agriculture department is not an industry and that the petitioner was engaged as casual labourer at the SMF Bhagani, who was not appointed against any civil post nor the work at farms are of permanent nature and the work at the farm was seasonal and the services of the labourer are co terminus with the end of the work. On merits, it is denied that the petitioner was engaged in the year 1980 and disengaged in the year 1985 and the petitioner misrepresenting the facts and filed the petition in a fashion manner on surmises and conjectures. It is contended that the petitioner left the work voluntarily w.e.f. 9.2.1995 and did not turn up to work. It is also denied that the petitioner made any representation for redressal of grievances and as such the petitioner has not completed 240 days in any calendar year except 1987, hence the petitioner is not entitled for any benefits under section 25-F of the Industrial Disputes Act, 1947 and as such prayed for the dismissal of the claim as prayed for.

4. No rejoinder filed. The following issues were framed by this Court on 9.9.2003.

1. Whether the termination of services of the petitioner by respondent w.e.f. Feb. 1995 is violative of section 25-F of the Industrial disputes Act, 1947?

.....OPP

2. Whether the petition suffers from delay and latches? If so its effect ?

.....OPR

3. Whether the petition is not maintainable?

.....OPR

4. Whether the petitioner had abandoned the job? If so, its effect?

.....OPR

5. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no. 2	No.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as daily rated beldar by the respondent in 1980 to 1995, who worked at Bhaghani Farm, who had completed 240 days in each calendar year, who was retrenched in 1995 without any notice and compensation and his juniors S/Shri Inder and

Hamid Ali were retained and are still working with the respondent and even after his retrenchment new persons S/Shri Inam Mohd. and Kaka were engaged and as such prayed for reinstatement in service alongwith seniority and back wages.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Shri K.C Jaswal has stated that the petitioner was employed to carry out the casual/seasonal work at farm and during Khair and Rabi season, the services of the laburers are co terminus with the computation of work. The petitioner abandoned the job of his own, who never approached the respondent for reengagement, hence the provisions of Industrial Disputes Act are not applicable in the case of the petitioner. The petitioner left the job w.e.f. 9.2.1995, who never turned up for duties and proved the detail of working days of the petitioner Ex. RA.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in a calendar year preceding his termination and his termination without notice and compensation is illegal and even junior to him are still continuing with the respondent department and as such he is entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was engaged as casual labour for specific period only for seasonal work whose services were never terminated by the respondent, who left the job of his own, hence the petitioner is not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent in the year 1985, who worked 25 days in 1985, 242 ½ days in 1987, 178 ½ days in 1988, 190 ½ days in 1989, 127 ½ days in 1990, 167 ½ days in 1991, 133 ½ days in 1992, 62 days in 1993, 115 days in 1994 and 16 ½ days in 1995 with the respondent as per detail of total days Ex. RA placed on record. Therefore, it is clear that the petitioner had put in more than 240 working days in a calendar year 1987 as is evident from the detail of working days Ex. RA. No doubt that the respondent has tried to establish on record that the petitioner himself abandoned the job but there is nothing on record which could go to show that the petitioner abandoned the job of his own. The respondent has failed to prove on record that they have served a notice under section 25-F of the Industrial disputes Act, 1947 and also failed to pay retrenchment compensation to the petitioner before retrenching him from service which is illegal and improper. The respondent has also tried to establish on record that the petitioner has not completed 240 working days in a calendar year preceding his termination. It is well settled in case titled as State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903, in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination, that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he had worked for more than 240 days in a calendar year 1987 as is evident from Ex. RA and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the termination of petitioner by the respondent w.e.f. Feb. 1995 is violative of section 25-F of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2:

In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their lordship of Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. In which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

And as such on the strength of this ruling, it can safely be concluded that this petition does not suffer from delay and laches. Accordingly, issue no.2 is decided against the respondent and in favour of the petitioner.

Issue No.3:

In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No.4:

In support of this issue, no evidence was led by the respondent being the legal issue. It is not proved on record by the respondent that the petitioner himself left the job of his own. However, it is well settled incase titled as **State of HP & Others Vs. Bhagat Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not left the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd Day of April 2009 in the presence of parties counsels at camp court Nahan.

(Parveen)

J.S.MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP. AT CAMP COURT NAHAN**

Ref no. 9 of 2005.
Instituted on 1.1.2005.
Decided on. 23.4.2009.

Mohd. Ali S/o Shri Bashir Mohd. R/o Village and P.O Bhagani, Tehsil Paonta Sahib, District Sirmour, HP.

Petitioner.

Vs.

Deputy Director, Agriculture Nahan District Sirmour, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“क्या उप कृषि निदेशक नाहन, जिला सिरमौर, हिमाचल प्रदेश द्वारा कामगार श्री मोहम्मद अली सपुत्र श्री बर्शीद मुहम्मद दैनिक वेतन बेलदार की सेवायें 240 दिनों से अधिक सेवा उपरान्त माह दिसम्बर, 1990 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित एवं न्याय संगत है ? यदि नहीं, तो कामगार श्री मोहम्मद अली किन सेवा लाभों एवं क्षतिपूर्ति का पात्र है ?

2. The petitioner has filed a claim asserting therein that he was engaged as daily waged beldar in agriculture farm Bhagani in the year 1980 and continued as such upto 1990 and then the services of the petitioner were orally dispensed with in violation of the provisions of the Industrial Disputes Act, 1947 as the petitioner had completed 240 days in each calendar year and before the disengagement of the petitioner, it was incumbent upon the respondent to comply with the mandatory provisions of the Industrial disputes Act, 1947 and to follow the principles of last come first go and that the persons who were engaged with the respondent are still continuing in service and the respondent also resorted to unfair labour practice by giving fictional breaks in the services of the petitioner and that the action of the respondent in disengaging the services of the petitioner is illegal, unjustified and arbitrary and as such prayed for reinstatement with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of delay and laches and the agriculture department is not an industry. On merits, it is contended that the petitioner was engaged as casual labourer on muster roll basis w.e.f. 1980, who had completed 240 days in calendar years 1980, 1981, 1982 and 1986 to 1989 and the mandays chart of the petitioner is annexure R1. It is contended that the petitioner does not come within the ambit of Industrial Disputes Act, 1947 and the function of the respondent to render help to agriculturists and as such the work in the department is not of permanent nature and the seed multiplication farm, Bhagani is generally available during peak period of crop operations which commences during the month of November to April (Rabi), June to October (Kharif) in every year. It is also contended that the petitioner himself abandoned the job during March, 1991, hence the petitioner cannot claim his continuity as a matter of right and that the petitioner does not fall within the category of Industrial Disputes as the work undertaken by the respondent is not of a permanent nature and as such prayed for the dismissal of the claim as prayed for.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 26.7.2006.

1. Whether the petitioner has been illegally terminated without complying the provisions of the Industrial disputes Act, 1947? If so, its effect?

.....OPP

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

....OPP

3. Whether the petition barred by limitation and is not maintainable?

....OPR

4. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no. 2 Entitled for reinstatement
alongwith seniority and continuity but without back wages.

Issue no.3 No.

Relief. Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar on daily wages in the year 1970 and worked as such till 1991 and then he was retrenched from service without any reason. No notice nor compensation was paid to him at the time of his removal, who has completed more than 240 working days in a calendar year and juniors to him S/Shri Gurmail, Chottu, Zimudeen are still working in the department and he is not gainfully employed after his disengagement of his services and as such prayed for reinstatement in service with all consequential benefits.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Shri M.S Parmar has stated that the petitioner was engaged as daily wages beldar in Jan. 1980, who continued as such till April 1991 and then the petitioner abandoned the job of his own. They never retrenched the services of the petitioner at any point of time and his department does not fall within the definition of industry as the department does not deal with trade or business and the petitioner was engaged for seasonal work.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in each calendar year preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still continuing with the respondent department and as such he is entitled for reinstatement with all consequential benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as casual labour for specific period only for seasonal work whose services were never terminated by the respondent, who left the job of his own, hence the petitioner is not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged by the respondent in the year 1980, who worked for 299 days in 1980, 297.5 days in 1981, 289.5 days in 1982, 126 days in 1983, 4.5 days in 1984, 227 days in 1985, 292 days in 1986, 284.5 days in 1987, 282 days in 1988, 258 days in 1989, 195 days in 1990 and 19.5 days in 1991 with the respondent as per detail of mandays chart annexure R-1 filed by the respondent with its reply placed on record. Therefore, it is clear from annexure R-1 that the petitioner had put in more than 240 working days in many calendar years as is evident from the detail of mandays chart annexure R-1. No doubt that the respondent has tried to establish on record that the petitioner was engaged for specific work only but there is nothing on record which could show that the petitioner was actually engaged for specific work especially when the departmental witness has admitted in his cross examination that season means season for three months i.e April, May and June whereas the petitioner had worked with the respondent department for more than eight years continuously having completed 240 working days in many years, hence it does not lie in mouth of respondent to say that the petitioner was engaged for seasonal work and for specific period. Apart from it, the respondent has also tried to establish on record that the petitioner himself abandoned the job but there is nothing on record which could go to show that the petitioner abandoned the job of his own. It is not proved on record by the respondent that the petitioner himself left the job of his own. It is well settled incase titled as State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to the above cited ruling, and keeping in view the entire evidence on record, it can safely be concluded that the petitioner has not left the job of his own.

14. Now, turning to the legal aspect of the case, the respondent has failed to prove on record that they have served a notice under section 25-F of the Industrial disputes Act, 1947 and also failed to pay retrenchment compensation to the petitioner before retrenching him from service which is illegal and improper. The respondent has also tried to establish on record that the petitioner has not completed 240 working days in a calendar year preceding his termination. It is well settled incase titled as State of HP & Ors Vs Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903, in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. The perusal of this ruling, makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination, that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he had worked for more than 240 days in many calendar years as is evident from annexure R-1 and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the services of the petitioner have been illegally and wrongly terminated by the respondent without complying the provisions of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2:

16. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondent without complying with the Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service with continuity and seniority. However, the petitioner is not entitled to any back wages as he has not placed any material on record that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3:

17. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form and there is no limitation under the I.D Act as it was held by their lordship of Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation and is perfectly maintainable in the present form. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd Day of April 2009 in the presence of parties counsels at camp court Nahan.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP.**

Ref No. 106 of 2004
Instituted on. 5.7.2004.
Decided on. 6.4.2009

Tek Chand S/o Shri Chet Ram, Village & P.O Okhroo, Tehsil & District Shimla, HP.

Petitioner...

Versus

The Divisional Forest Officer (DFO) HP Forest Division Rajgarh, District Sirmour, HP.

Respondent...

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of service of Shri Tek Chand S/o Shri Chet Ram daily wages workman by the Divisional Forest Officer, Forest Division Rajgarh, District Sirmour, HP w.e.f. 1.4.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of seniority, back wages, service benefits and amount of compensation Shri Tek Chand workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was employed with the respondent department during the month of Jan. 1995 and as such continued working till April, 2002 when he was illegally removed from service and then after some time, the petitioner was reengaged and disengaged due to paucity of funds and the break during the year 2002 are fictional and arbitrary and without following the provisions of section 25-F, and 25-N of the Act which is evident from notice issued by the Range Officer, Rajgarh, who is not a competent authority being not an appointing authority of the petitioner and the petitioner continued in the service of the respondent with working of more than 240 days in each year for seven years and as such the petitioner has attained the temporary status in the employment and the services of the petitioner cannot be terminated without serving one months notice, whereas the respondent has failed to serve the notice and even no compensation under section 25-F of the Act was paid to him at the time of termination which is bad in law and that the respondent did not comply with the statutory and mandatory provision of section 25-F and 25-N of the Act and that the retrenchment of the petitioner is also violative and discriminatory under Articles 14 & 16 of the Constitution of India and that the services of the junior workmen were retained by the respondent while retrenching the services of the petitioner and in this manner the respondent committed serious violation of section 25-G of the Act and that the arbitrary and sudden retrenchment of the petitioner has made his integrity doubtful in the eyes of one and all as the petitioner is unemployed since the date of his illegal retrenchment and that the right of livelihood, its continuity, better, proper and healthy service conditions are now recognized basic rights as per the precedents set by the Hon’ble Supreme Court while interpreting Articles 21 & 41 of the Constitution of India and as such prayed for reinstatement in service with seniority and continuity alongwith full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was engaged as daily wagger on muster roll basis at Forest Check Post Habban during Jan. 1995, who continued with intermittent breaks at his own sweet will upto March, 2001 and then the Check Post was shifted to Rajgarh Range alongwith petitioner and staff of the Check post and the petitioner was reengaged on watch and ward of seized timber and planting work in Rajgarh Range, who continued to work in Rajgarh Range upto March, 2002 and then he was temporarily disengaged from work due to paucity of funds and work as per decision of Hon’ble High Court dated 13th October, 1995 by serving notice in accordance with law. The petitioner was again engaged on work as per seniority and on availability of work and funds, who continued to work upto 24.8.2002 and then the petitioner was again disengaged from work due to paucity of funds and non availability of work w.e.f. 25.8.2002 by serving notice dated 28.8.2002 in accordance with law and since the petitioner was daily wagger and as such the Range Officer is competent to serve him due notice as per law and that since the petitioner was disengaged from work due to paucity of funds and non availability of work, hence it cannot be construed as termination as no violation of any section of the I.D. Act, 1947 and there was no need to serve one months notice or pay compensation for this temporary disengagement till availability of work/funds and that no junior persons to petitioner were retained by the department and as such prayed for the dismissal of the claim of the petitioner.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 20.12.2005 on the pleading of the parties.

1. Whether the petitioner has been illegally terminated by the respondent w.e.f. 1.4.2003? If so, its effect?
.....OPP
2. If issue No.1 is proved in affirmative, to what relief the petitioner is entitled to?
...OPP
3. Whether the present petition is not maintainable?
....OPR
4. Relief.
6. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1	Yes.
Issue no.2	Entitled to reinstatement in Service with seniority, continuity but without back Wages.
Issue no.3	No.
Relief	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No-1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged on 1.1.1995 at Forest Range Habban under Forest Division Rajgarh, who worked for more than 240 days in 1995 to 2001 as per mark X whose services at first instance was disengaged on 27.3.2002 without any notice and compensation and the notice of the disengagement is Ex. PA, who was reengaged on 15.5.2002 as per Ex. PB and then he joined on 15.5.2002 at Rajgarh and he was again terminated on 25.8.2002 as per Ex. PC, who was again engaged on 15.1.2003 as per letter mark Y and then finally his services were terminated on 1.4.2003 vide Ex. PD without any notice and retrenchment compensation and during his service tenure, his work and conduct was satisfactory with the department and juniors were retained after his removal, who was also engaged at construction unit PCCF Office, Shimla where his previous seniority was never taken into account on the ground that Rajgarh is a separate Division and as such prayed for reinstatement with all benefits as prayed in the claim petition.

9. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Sant Ram, Deputy Ranger, Forest Block Bimber has stated that the petitioner was engaged at check post Chandol in Jan. 1995 as forest worker on daily wages and the check post was shifted to Rajgarh in 2001 and the petitioner has also been shifted to Rajgarh where he worked till April, 2002. As there was no work available at Rajgarh and even the funds were also not available, hence the department sent one month notice to the petitioner which is Ex. PA and PD. The work was of temporary nature which came to an end as the work and funds were not available. The petitioner made the request to the department for reengagement, who has been engaged at Tolland Shimla in June, 2003 where the petitioner has worked for sometime and then he left the job of his own.

10. RW-2 Shri Lal Singh Chauhan has stated that the petitioner was engaged as beldar on daily wages on 9.6.2003 and continued as such till 20.12.2003 with Executive Engineer, Forests, Shimla-2 and proved the mandays chart Ex. RW-2/A. The petitioner has left the job of his own and the DFO Rajgarh and the Executive Engineer, Forest are different authorities, who maintain their separate seniority list of the workmen.

11. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in every calendar year preceding his termination and as such he is entitled to be reinstated in service with seniority and continuity along with back wages.

12. On the contrary, the respondent contends that the petitioner was engaged against specific work and for specific period and after the completion of the work the services of the petitioner stood automatically terminated, hence the petitioner is not entitled to any relief as prayed for.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is not disputed that the petitioner was engaged in the month of Jan.1995, who worked with the respondent till April 2002. No doubt that the respondent has tried to establish on record that they have served a notice Ex. PA, Ex. PC and Ex. PD to the petitioner placed on record. After the scrutiny of the notices, it is clear that the respondent has failed to give proper and legal notice to the petitioner under section 25-F of the Industrial disputes Act, 1947 as no one month notice nor compensation was paid to the petitioner at the time of termination of service of petitioner which are the requirement of section 25-F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by the Hon'ble Supreme Court incase titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :—

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

In the instant case, the respondent has failed to prove on record that it has complied with basic requirements of section 25-F of the Industrial Disputes Act, 1947. Besides it, the respondent has also tried to establish on record that the petitioner was engaged for seasonal work for specific period but it remains a fact that the petitioner was engaged on the check post at Habban in Jan. 1995 as forest worker on daily wages and when the check post was shifted, the petitioner was also shifted to Rajgarh in 2001 as is evident from the statement of RW-1 Shri Sant Ram. The petitioner has completed more than 240 working days in many calendar years as admitted by RW1 Shri Sant Ram in his cross examination that the petitioner had worked for more than 325 days in each calendar year and as such the termination of the petitioner without any notice or payment of compensation under section 25-F of the Industrial disputes Act, 1947 is held to be illegal and improper being the daily wages workman. Accordingly this issue is decided in favour of petitioner and against the respondent.

Issue No.2:

15. Since I have held under issue No.1 above, that the services of the petitioner has been illegally terminated by the respondent w.e.f. 1.4.2003 hence the petitioner is entitled for reinstatement with seniority and continuity in service. However the petitioner is not entitled for back wages as he has not placed any material on record that he was not gainfully employed after his termination. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of the petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue No. 1 to 3 above, the claim of the petitioner succeeds and is hereby allowed and as such the petitioner is ordered to be reinstated forthwith in service with seniority and continuity in service from the date of his termination. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of April, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP. AT CAMP COURT NAHAN**

Ref no. 134 of 2004.
Instituted on 8.10.2004.
Decided on. 23.4.2009.

Yogeshwar Dutt S/O Shri Mitter Dutt R/o Village & P.O Mangarh, Tehsil Pachhad, District Sirmour, HP.

Petitioner.

Vs.

D.F.O Rajgarh Tehsil Pachhad, District Sirmour, HP.

Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:-

“क्या श्री योगेश्वर दत्त सपुत्र श्री मितर दत्त, वेतन भोगी बेलदार वन मण्डल अधिकारी, वन मण्डल राजगढ़, तहसील पच्छाद, जिला सिरमौर, हि0 प्र0 द्वारा माह सितम्बर, 2000 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित एवं न्याय संगत है। यदि नहीं, तो कामगार किस राहत एवं क्षतिपूर्ति का पात्र है।”

2. The petitioner has filed a claim asserting therein that he was engaged as daily waged beldar in forest department in the year 1990, who completed 240 days of service in each calendar year upto September, 2000 when the services of the petitioner were terminated without following the provisions of Industrial disputes Act, 1947 and even junior to the petitioner are still working with the respondent and that the respondent also gave the fictional breaks in the services of the petitioner from time to time without any justification and that the action of the respondent in disengaging the services of the petitioner without following the mandatory provisions of Industrial disputes Act, 1947 is unjustified, arbitrary and illegal which amounts to unfair labour practice and as such prayed for reinstatement with all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections that the petitioner has no locus standi and cause of action to file and maintain the petition and that the petitioner has not come with clean hand to this Court. On merits, it is denied that petitioner was engaged as daily wages beldar/mali. It is also denied that the petitioner has completed 240 days of service in each calendar year since the date of his engagement. It is contended that the petitioner was engaged as daily wages worker during the year 1990 and then the petitioner remained on work during the year 1999 and 2000 subject to the availability of work and budget, who left the job in September, 2000 at his own. It is denied that the respondent gave fictional breaks in service of the petitioner from time to time. It is also denied that the action of the respondent in disengaging the services of the petitioner without following the mandatory provisions of the Industrial Disputes Act, 1947 is unjustified, arbitrary and amounts to unfair labour practice. It is contended that since there was no need to call back the petitioner as there was no work available with the respondent and as and when the work is available with the respondent, the services of the petitioner would be taken senioritywise and as such prayed for the dismissal of the claim as prayed for.

4. No rejoinder filed. The following issues were framed by this Court on 21.4.2006.

1. Whether the services of the petitioner have been illegally terminated by the respondent without complying the provisions of the Industrial disputes Act, 1947? If so, its effect?

.....OPP

2. If issue no.1 is proved in affirmative, to what relief the petitioner is entitled to?

.....OPP

3. Whether the present petition is not maintainable?

.....OPR

4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no. 2	Entitled for reinstatement alongwith seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

7. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as beldar/Mali in forest division Rajgarh in 1990, who was retrenched in 2000. No notice nor compensation was given to him at the time of his retrenchment, who had completed 240 days of service during each calendar year and he is not gainfully employed after his retrenchment and the forest department is an industry within the meaning of I.D Act, 1947. His juniors Smt. Raksha Devi, Joginder Singh and Rattan Dutt are still working with the respondent, who was illegally retrenched and as such prayed for reinstatement in service with all consequential benefits including back wages.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Shri Rajesh Kumar has stated that the petitioner was engaged in nursery on daily wages in October, 1987 but again said that the petitioner was engaged in June, 1990, who worked till Sep. 2000 and proved the mandays chart Ex. RA. The petitioner left the job of his own, who never reported for duties and the petitioner has not completed 240 days in a calendar year and they used to engage the worker on the availability of work and the petitioner worked under water shed programme as per certificate mark X and the persons coming regularly are regularized as per government scheme and the department is prepared to engage the petitioner on daily wages if he is prepared to report for duty.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days in 12 calendar months preceding his termination and his termination without notice and compensation is illegal and even juniors to him are still continuing with the respondent department and as such he is entitled for reinstatement with all consequential benefits.

10. On the contrary, the respondent contends that the petitioner was engaged as casual labour for specific period only for seasonal work whose services were never terminated by the respondent, who left the job of his own, hence the petitioner is not entitled for the protection of section 25-F of the Industrial Disputes Act, 1947.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case i.e Ex. RA calculating the working days of the petitioner from 9/2000 to 8/1999, the petitioner has completed 322 days in twelve calendar months preceding his termination and obviously therefore, it has proved on record that the petitioner has completed more than 240 working days i.e 322 days in twelve calendar months preceding his termination as is evident from Ex. RA placed on record.

13. Apart from it, the respondent has also tried to establish on record that the petitioner himself abandoned the job but there is nothing on record which could go to show that the petitioner abandoned the job of his own. It is not proved on record by the respondent that the petitioner himself left the job of his own. It is well settled incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLIJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

I have also scrutinized the evidence on record and there is no sufficient evidence on record to show that the petitioner has abandoned the job of his own and therefore, it can safely be concluded that the petitioner has not left the job of his own.

14. Now, turning to the legal aspect of the case, the respondent has failed to prove on record that they have served a notice under section 25-F of the Industrial disputes Act, 1947 and also failed to pay retrenchment compensation to the petitioner before retrenching him from service which is illegal and improper. It is clear that the respondent has failed to give proper and legal notice to the petitioner under section 25-F of the Industrial disputes Act, 1947 as no one month notice nor compensation was paid to the petitioner at the time of termination of service of petitioner which are the requirement of section 25-F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by the Hon'ble Supreme Court in case titled as Uttranchal Forests Development Corporation & Anr Vs. Jabar Singh & Ors. as reported in 2007-II-LLJ 95 in which it was held that :—

“Retrenchment notice in question not complying with two conditions of section 25-N namely giving three months notice to workmen in writing or wages in lieu thereof and taking prior permission of government-Workman, therefore entitled to reinstatement with full back wages”

15. The petitioner has proved on record that he had put in more than 240 working days in a calendar year preceding his termination and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the services of the petitioner have been illegally and wrongly terminated by the respondent without complying the provisions section 25-F of the Industrial Disputes Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2:

16. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondent without complying with the Industrial Disputes Act, 1947, hence the petitioner is held entitled to be reinstated in service with continuity and seniority. However, the petitioner is not entitled to any back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent being the legal issue. However I find nothing wrong with this claim of the petitioner which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 23rd Day of April 2009 in the presence of parties counsels at camp court Nahan.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA

Ref No:- 180 of 2001.
Instituted On:- 15.9.2001
Decided On:- 20.4.2009.

Mangat Ram S/o Shri Jhinu Ram R/o Village Khadog P.O Thanger, Tehsil Chopal, District Shimla, HP.

..Petitioner.

Versus

1. The Secretary HPSEB, Vidyut Bhawan, Shimla-4.
2. The Executive Engineer HPSEB Division, Theog District Shimla, HP.
3. S.D.O HPSEB Sub Division Nerwa Tehsil Chopal District Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner:- Shri M.S Kanwar, Ld. Csl.

For respondent:- Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of the services of Shri Mangat Ram S/o Shri Jhinu Ram Village Khadog P.O Thanger Tehsil Chopal District Shimla, HP as alleged, by the Executive Engineer HP State Electricity Board, Division Chopal District Shimla HP w.e.f. April.1991 is legal and justified? If not, what relief of service benefits and amount of compensation, the above workman is entitled to?”

“Whether Shri Mangat Ram left the job of his own as alleged ? If so, its effect?”

2. The petitioner has filed the claim asserting therein that he was initially engaged as beldar with the employer in the year 1983 and continued to work till the year 1989 and then the services of the petitioner was orally terminated without any cogent reason and that the respondent has engaged the fresh persons S/Shri Kalam Singh and Murti Ram in place of the petitioner which is violation of section 25-F and H of the Industrial Disputes Act. The petitioner has completed 240 days in a calendar year despite the fact that the respondent terminated the services of the petitioner without assigning any cogent reasons and without serving 10 days notice on the petitioner, which is against the provisions of Rule 14 of the Industrial Establishment (Standing Orders) Act, 1946 and as such prayed for reinstatement alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending therein that the petitioner was engaged as daily rated beldar in the year 1984, who worked till 1991 with certain breaks and the persons shown in the claim are the senior to the petitioner and the petitioner has not completed 240 days in a calendar year, who left the job of his own and the respondent has never violated the rule 14(1) and 14(2) of the standing order of HPSEB and that the petitioner never made any requests for reengagement with the respondent and the respondent never violated the Industrial Disputes Act, 1947 and as such prayed for the dismissal of the claim petition.

4. No rejoinder filed. The following issues were framed by this Court on 18.5.2004.

1. Whether the services of the petitioner have been illegally terminated in violation of Industrial disputes Act? If so, its effect?

... OPR

2. If issue no.1 is not proved, to what relief the petitioner is entitled to?

...OPP

3. Whether the petition in the present form is not maintainable?

...OPR

4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1:	Yes.
Issue no.2:	Entitled for reinstatement in service with seniority and continuity but without back wages.
Issue no.3:	No.
Relief:	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No-1:

7. Coming to issue No-1, the petitioner has examined himself as PW-1 who has stated that he was engaged as beldar on muster roll basis during the year April, 1983 in Chopal Division for laying down the new LT & HT line and 10 to 12 persons were working with him and some of persons working with him are regularized by the department and S/Shri Kalam Singh, Murti and Dula Ram are still working with the respondent department. He has completed 240 days in preceding 12 months and the respondent department has given fictional breaks to him and not allowed to continue work, whose services were orally terminated w.e.f April, 1991 without any notice or compensation, who has visited the respondent for his reengagement but he was not reengaged and some of the persons engaged after him are still working with the respondent department and the work is still available with the respondent and as such prayed for reinstatement with all consequential benefits.

8. To rebut the case of the petitioner, the respondent examined, Er. Hansraj, who has stated that the petitioner was engaged as daily wages beldar on 26.8.1983, who continued as such till 20.4.1991, with fictional breaks and then the petitioner abandoned the job of his own and the petitioner did not move any application to the respondent at any point of time and the respondent never terminated the services of the petitioner and no junior to the petitioner was retained by the respondent and proved the mandays chart of the petitioner Ex. RA.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days and his termination without notice and compensation is illegal. Moreover his juniors are still working with the respondent department, hence he is entitled for the protection of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947.

10. On the contrary, the respondents contend that the petitioner was not terminated by the respondent but the petitioner himself has abandoned the job and no junior to the petitioner is retained by the respondent after his abandonment and as such, the petitioner is not entitled to any relief.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it stands proved on record from mandays chart Ex. RA placed on record it is clear that the petitioner has completed 332 working days in a calendar year 1983-84. No doubt, RW-1 Shri Hans Raj J.E HPSEB appeared in the witness box on 24.2.2009, who could not tell whether junior to the petitioner was retained by the respondent. He has further stated that there was no record with him which could show that how many workmen were employed after 1991. Since RW-1 appeared as a departmental witness who has categorically stated that he is well conversant with the facts of the case and brought the record of the case but he could not prove on record as to how many workmen were employed in his Sub Division after 1991 and obviously therefore, adverse inference has to be drawn against the respondent having the entire record of the workmen who could prove that no junior to the petitioner was engaged and retained by them. In view of no such evidence on record, the adverse inference has to be drawn against the respondent. It is well settled in case titled as **State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he had worked for more than 332 days in a calendar year 1983-84 as is evident from Ex. RA and further the respondent could not refute the allegation of petitioner that the juniors to him are still working with the respondent and the respondent J.E failed to produce the record of workmen and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was paid by the respondent to the petitioner at the time of termination and as such, the termination of Shri Mangat Ram petitioner by the respondent w.e.f. April, 1991 is illegal and unjustified without complying with the provisions of ID Act, 1947.

14. Now, adverting to the other aspect of the case, the respondent has tried to establish on record that the petitioner has left the job of his own. It is not proved on record by the respondent that the petitioner himself left the job

of his own. However, it is well settled incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to entire evidence on record and having regard to the above cited ruling, it can safely be concluded that the petitioner has not left the job of his own, whose termination without notice or compensation is held illegal and improper. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2:

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA.**

Ref No:- 162 of 2002.
Instituted On:- 29.5.2002
Decided On:- 20.4.2009.

Bahadur Singh S/o Shri Gangu Ram R/o Village Kubal P.O Dangar Tehsil Chopal, District Shimla, HP.

..Petitioner.

Versus

4. The Secretary HPSEB, Vidyut Bhawan, Shimla-4.
5. The Executive Engineer HPSEB Division, Theog District Shimla, HP.
6. S.D.O HPSEB Sub Division Nerwa Tehsil Chopal District Shimla, HP.

..Respondents.

For petitioner: Shri M.S Kanwar, Ld. Csl.
For respondent: Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“कि क्या श्री बहादुर सिंह सपुत्र श्री गंगू राम दैनिक कामगार को अधिशासी अभियन्ता, विद्युत मण्डल, हि0 प्र0, राज्य विद्युत परिषद्, चौपाल, जिला शिमला द्वारा औद्योगिक विवाद अधिनियम, 1947 की धारा 25F एवं 25N की अनुपालना किए बिना नौकरी से निकाला जाना उचित एवं न्यायसंगत है ? अगर नहीं, तो श्री बहादुर सिंह सपुत्र श्री गंगू राम कामगार किस वरिष्ठता, सेवा लाभ एवं राहत का पात्र है ? या कि क्या अधिशासी अभियन्ता विद्युत मण्डल, हि0 प्र0 राज्य परिषद् चौपाल, जिला शिमला में श्री बहादुर सिंह सपुत्री गंगू राम कामगार द्वारा दिनांक 30-4-1995 को स्वयं नौकरी

2. The petitioner has filed the claim asserting therein that he was initially engaged as beldar with the respondent in the year 1982 and continued to work till the year 1990 and then the services of the petitioner was orally terminated without giving any notice and that the petitioner has completed 240 working days in the calendar year and that the petitioner is entitled for the protection of section 25-F of the Act as the petitioner has completed 240 working days in a calendar year and that against the verbal termination, the petitioner requested the respondent for his reengagement but no action was taken by the respondent and that the respondents had engaged the fresh persons S/Shri Kalam Singh and Murti Ram by violating the provisions of last come first go and as such prayed for reinstatement alongwith all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and there exists no cause of action in favour of the petitioner and against the respondent. On merits, it is denied that the petitioner was initially engaged in the year 1982 and continuously worked on daily wages basis till 1990. It is also denied that the services of the petitioner were orally terminated by the respondent. It is contended that the petitioner was engaged as daily wages beldar w.e.f. 26.8.1983 to 20.1.1990 with breaks and then the petitioner again worked with the respondent w.e.f. 1.4.1995 to 30.4.1995 and as such the petitioner has not continuously worked with the respondent and that the petitioner had not completed 240 days in the calendar year, hence the petitioner is not entitled for the protection of section 25-F of the Industrial disputes Act, 1947 and that the petitioner never visited the office of the respondent for his reengagement and that S/Shri Kalam Singh and Murti Singh had worked with the respondent on daily wages during the years 1982 to 1984 and 1985 to 1986 with breaks and left the job of their own and that there was no need to issue the casual cards to maintain the seniority and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition. The following issues were framed by this Court on 18.5.2004.

1. Whether the services of the petitioner have been wrongly terminated without complying the provisions of section 25-F of the Industrial disputes Act? If so, its effect? ...OPR
2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to? ...OPP
3. Whether the petition in the present form is not maintainable? ...OPR
4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1:	Yes.
Issue no.2:	Entitled for reinstatement in service with seniority and continuity but without back wages.

Issue no.3: No.

Relief:- Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.**Issue No.1:**

7. Coming to issue no.1, the petitioner has examined himself as PW-1 who tendered his affidavit Ex. PA in his evidence asserting therein that he was engaged as beldar on muster roll basis in April 1982 in Chopal Division whose services were orally terminated in April, 1995 without notice and without compensation and he has completed 240 days in preceding 12 months and some of persons engaged after him are still working with the respondent Board and as such he may be reinstated with all consequential benefits.

8. To rebut the case of the petitioner, the respondent examined RW-1 Er. Hansraj, who has stated that the petitioner was engaged as daily wages workman on 26.8.1983, who continued as such till 25.6.1990, who was reengaged on 1.4.1995 to 30.4.1995 with fictional breaks and then the petitioner abandoned the job of his own and the petitioner did not move any application to the respondent at any point of time and the respondent never terminated the services of the petitioner and no junior to the petitioner was retained by the respondent and proved the mandays chart of the petitioner Ex. RA.

9. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 days and his termination without notice and compensation is illegal. Moreover his juniors are still working with the respondent department, hence he is entitled for the protection of section 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947.

10. On the contrary, the respondents contend that the petitioner was not terminated by the respondent but the petitioner himself has abandoned the job and no junior to the petitioner was engaged and retained by the respondent after his abandonment and as such, the petitioner is not entitled to any relief as claimed for.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it stands proved on record from mandays chart Ex. RA placed on record that the petitioner has completed 307 working days in a calendar year 1984. No doubt, RW-1 Shri Hans Raj J.E HPSEB appeared in the witness box on 24.2.2009, who could not tell whether junior to the petitioner was retained by the respondent. He has further stated that there was no record with him which could show that how many workmen were employed after 1995. Since RW-1 appeared as a departmental witness who has categorically stated that he is well conversant with the facts of the case and brought the record of the case but he could not prove on record as to how many workmen were employed in his Sub Division after 1995 and obviously therefore, adverse inference has to be drawn against the respondent having the entire record of the workmen who could prove that no junior to the petitioner was engaged and retained by them. In view of no such evidence on record, the adverse inference has to be drawn against the respondent. It is well settled in case titled as State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903, in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

13. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he worked for more than 307 days in a calendar year 1984 as is evident from Ex. RA and further the respondent could not refute the allegation of petitioner that the juniors to him are still working with the respondent and the respondent J.E failed to produce the record of workmen and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination and obviously therefore, I am of the firm opinion that no notice nor any retrenchment compensation was given by the respondent to the petitioner at the time of termination and as such, the termination of the petitioner by the respondent is illegal and unjustified without complying with the provisions of ID Act, 1947.

14. Now, adverting to the other aspect of the case, the respondent has tried to establish on record that the petitioner has left the job of his own. It is not proved on record by the respondent that the petitioner himself left the job of his own. However, it is well settled incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, keeping in view of the entire evidence and having regard to the above cited ruling, it can safely be concluded that the petitioner has not left the job of his own, whose termination without notice or compensation under section 25-F of the Industrial Disputes Act, 1947 is held illegal and improper. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2:

15. Since I have held under issue no.1 above, that the services of the petitioner has been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA**

Ref No. 129 of 2004.
Instituted on 28.4.2004.
Decided on 20.4.2009.

Vidya Devi W/o Shri Nanda Ram, House no.8, Raj Bhawan Shimla-3, HP.

...Petitioner

Versus

Member Secretary State Legal Services Authority, Craig Garden, Shimla-2 (HP).

...Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Vishal Panwar, Ld. Csl.
For respondent : Shri Puneet Goel, Law Officer.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the termination of services of Smt. Vidya Devi W/o Shri Nanda Ram by the Member Secretary State Legal Services Authority, Craig Garden, Shimla-1 w.e.f. 16.12.1996 without complying the provisions of Industrial Disputes Act, 1947 is proper and justified. If not, to what relief of service benefits Smt. Vidya Devi is entitled to?”

2. The petitioner has filed a claim asserting therein that she was initially engaged as part time peon in the respondent department on 1.1.1995 on the fixed salary of Rs. 707/- per month, who continued as such till 21st July, 1995 and then the services of the petitioner were converted into daily wages basis for eight hours @ Rs. 45.75 paise per day vide order dated 21st July 1995, who continued to work as such till 19.3.1996 and then the services of the petitioner were orally terminated by the respondent and that after oral termination of the petitioner, the respondent department has sent the requisition to the District Judge, Solan and SDO HPSEB Solan to sponsor the names of desirous persons for the post of peon whereas the petitioner was working with the respondent, who was thrown out from the job and as such the SDO HPSEB sponsored the name of Shri Kundan Singh whose services as peon were engaged and regularized in the respondent department and that against this illegal action of the respondent, the petitioner challenged the oral termination order dated 19.3.1996 before the Administrative Tribunal which was decided on 13.12.1996 and that the in pursuance of the orders of the Administrative Tribunal, the respondent had terminated the services of the petitioner on 16.12.1996 and then the respondent published an advertisement in Giri Raj Weekly on 12th Feb. 1997 for filling up a post of class-IV on daily wages basis and as per advertisement, no qualification was prescribed and that the petitioner also applied for this post in view of the fact that the department would consider her case but the respondent has given the appointment letter to Shri Vijay Kumar and Shri Roop Lal vide appointment letter dated 4.4.1997 and that the petitioner had preferred another OA on fresh cause of action which was returned to the petitioner on the ground of jurisdiction and that section 25-F of the Industrial Disputes Act, 1947 provides for conditions precedent to the retrenchment of the workman which bears the retrenchment of a workman until he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice and payment of retrenchment compensation wages for the period of the notice equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months and that notice in the prescribed manner is served on the appropriate government (for such authority as may be specified by the appropriate government by notification in the official gazette but in the case of the petitioner any of the conditions precedent have not been followed by the respondent prior to terminating the services of the petitioner which is illegal and wrong and that the respondent has violated the section 25-F & H of the ID Act, 1947 by engaging fresh persons and the claim of the petitioner was ignored and that the respondent has also indulged in an illegal and unfair manner as the preference right of the petitioner was ignored and as such prayed for reinstatement with retrospective effect alongwith all consequential benefits, hence this claim duly supported by an affidavit.

3. The respondent resisted and contested the claim of the petitioner which filed reply interalia raising preliminary objections that the contentions and assertions made by the petitioner are misplaced and wrong and that the petitioner was engaged to the post of part time class-IV for four hours daily, who worked in that capacity w.e.f. 1.1.1995 till 31.7.1995 vide noting dated 31.12.1994 which was sanctioned by the competent authority till 29.2.1996 and the petitioner worked for a period of 89 days and was paid wages calculated at hourly basis for that period and then the petitioner was reengaged vide noting dated 29.7.1995 when the sanction was granted by the competent authority vide letter dated 21.7.1995 for a period of 89 days which was further extended vide notice no. 127 and 129 for a period of 89 days and 29 days respectively upto 29.2.1996 and then the sanction was not extended by the competent authority and the period of which the petitioner engaged expired and her services stood terminated by efflux of time and the post against which the petitioner was engaged did not exist after 1.3.1996 and the petitioner preferred an O.A. before the Administrative Tribunal for reengagement and the respondent in compliance with the orders passed by Administrative Tribunal reengaged the petitioner vide order dated 20.3.1995 which was dismissed vide order dated 13.12.1996 on the grounds that the petitioner had not completed 240 days of service and the petitioner was informed vide letter dated 16.12.1996 and her services were not engaged thereafter, whose services were terminated after having complied with the legal requirements and in terms of service conditions and that the post of Class-IV daily wages employee was sanctioned by the competent authority which was published in Giri Raj newspaper and the applications from eligible candidates were also invited through Employment Exchange and the petitioner was also called and considered alongwith other candidates for the post and the petitioner participated in the selection process before the Selection Board, who was not selected for the post and that no cause of action has arisen to the petitioner against the respondent

and that the matter is not an industrial dispute as defined under the provisions of Industrial Disputes Act and cannot be adjudicated by this Court and that the respondent does not fall within the purview of industry and that the claim petition is bad for nonjoinder of necessary parties and that the claim is barred by principles of resjudicata and that the claim is barred by limitation. On merits, it is contended that the petitioner was engaged to the post of part time Class-IV for four hours daily, who worked w.e.f. 1.1.1995 to 31.7.1995. It is also contended that the capacity in which the petitioner working was altered and she was reengaged in terms of noting dated 29.7.1995 when the sanction was granted by the competent authority vide letter dated 21.7.1995 for a period of 89 days and then the tenure of the petitioner was extended for a period of 89 days upto 29.2.1996 and as such the services of the petitioner were terminated vide letter dated 16.12.1996 and that the provisions of Industrial Disputes Act, 1947 are not attracted on the facts and circumstances of the case, hence prayed for dismissal of the claim as prayed for.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reiterated and reaffirmed the averments of the petition.

5. The following issues were framed by this Court on 13.12.2005 on the pleading of the parties.

1. Whether the services of the petitioner have been illegally terminated by the petitioner ignoring the provisions of Industrial disputes Act? If so, its effect?

.. OPP

2. If issue no.1 is proved in affirmative to what relief the petitioner is entitled to?

..OPP

3. Relief.

6. I have heard the Ld. Counsels for the parties and have also gone through the written arguments submitted by both the parties.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1:	No.
Issue no.2:	Not entitled to any relief.
Relief:	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No-1:

8. Coming to this issue, the petitioner has examined herself as PW-1, who has stated that she was engaged as peon by the respondent on 1.1.1995 and continued as such till 31.7.1995 and then she was engaged on 1.8.1995 on daily wages basis and continued as such till March, 1996 and then her services were orally terminated by the respondent and in her place Shri Kundan Singh was engaged, who is still working and regularized and proved the mandays chart Ex. PA and two new posts (one of peon and another of Safai Karamchhari) were sanctioned by the government vide sanction Ex. PB and she challenged her termination before Administrative Tribunal, the copy of which is Ex. PC and she applied for the post of peon vide application Ex. PD but she was not taken into service and after her termination Vijay and Roop Lal were engaged and as such prayed for reinstatement.

9. In order to rebut the case of the petitioner, the respondent examined RW-1 Shri T.N Vaidya, President Consumer Forum, Muktsar (Punjab), who has stated that he remained posted as Member Secretary Legal, HP State Legal Authorities from 1995 to May, 1997 and the petitioner was engaged against the part time post for four hours which was filled on 1.1.1995 and the post was temporarily created for one year and the petitioner was engaged on the request without advertising the post and on the expiry of tenure of the post, the state government did not sanction the post for next year of 1996, hence no further temporary appointment was extended in favour of the petitioner.

10. The case of the petitioner is that she was appointed by the respondent as part time Class-IV and then she was engaged as daily wages peon by the respondent, who had completed 240 days of service with the respondent preceding her termination, who was wrongly and illegally terminated by the respondent without notice and without payment of retrenchment compensation and as such she is entitled to be reinstated in service with all consequential benefits including back wages.

11. On the contrary, the respondent contends that the petitioner was engaged as part time peon for 89 days whose tenure was extended from time to time on the approval of the state government and after the expiry of tenure, the services of the petitioner stood terminated as no sanction was received from the government and even the petitioner had not completed 240 working days of service in a calendar year preceding her termination, hence the petitioner is not entitled to any relief as prayed for.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is clear that the petitioner was initially appointed as part time class-IV for four hours daily, who worked as such from 1.1.1995 to 31.7.1995 on the sanctioned post, who was reengaged on 1.8.1995 for 89 days and then the tenure of the petitioner was further extended for a period of 89 days and 29 days upto 29.2.1996. The petitioner has failed to prove on record that she has completed 240 working days in a calendar year preceding her termination. There is nothing on record which could show that the petitioner has completed 240 working days preceding her termination. The petitioner has tried to establish on record that her case was not considered by the respondent when the post of class-IV peon was advertised but it remains a fact that the respondent also called the petitioner to appear before the selection committee for appointment of class -IV post of peon, who herself has admitted that she also appeared before the selection committee but she was not selected by the selection committee which selected Vijay and Roop Lal and obviously therefore, it can safely be concluded that Vijay and Roop Lal were selected on the basis of recommendation of the selection committee and the petitioner was also considered for appointment, who could not qualify the requisite qualification of the same and as such they cannot be said to be the juniors to the petitioner.

14. Now adverting to the legal aspect of the case, it is clear that the petitioner has not completed 240 working days in a calendar year preceding her termination. It is significant to note that the petitioner was continuing in service on the direction passed by the HP Administrative Tribunal vide order dated March, 29, 1996 and her application was rejected by the Administrative Tribunal on 13.12.1996 in O.A-409/96 on the ground that she had not completed 240 days prior to her termination. It is also significant to note that the O.A of the petitioner in O.A no. 810/97 was ordered to be returned to her for presenting the same before an appropriate forum as it was held that this subject matter falls under the Industrial Disputes Act. It is worthwhile to mention here that the petitioner was duly informed about the rejection of her application before the Administrative Tribunal vide letter 2208 dated 16.12.1994 and her services were not reengaged thereafter and since the petitioner has failed to prove on record that she had completed 240 working days preceding her termination, hence no notice nor compensation was required to be given to the petitioner for compliance of section 25-F of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager. Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produce; no co-worker was examined; muster roll produced by employer has not been contradicted. Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service. Workman not entitled for protection of Section 25-F before his service was terminated.”

Thus, having regard to the entire evidence on record and in view of the above cited ruling, it can safely be concluded that the petitioner had not completed 240 working days in a calendar year preceding her termination and as such no notice nor compensation under section 25-F of the Industrial disputes act, 1947 was required to be given to the petitioner at the time of her termination and obviously therefore she is not entitled for protection under section 25-F of the Industrial Disputes Act, 1947. Accordingly issue no.1 is decided in favour of the respondent and against the petitioner.

Issue No.2:

15. Since I have held under issue no.1 that the services of the petitioner have not been illegally terminated by the respondent, hence the petitioner is not entitled to any relief as prayed for. Accordingly this issue is decided in favour of respondent and against the petitioner.

Relief:

As a sequel to my above discussion and findings on issue No. 1 & 2, the claim of the petitioner fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th day of April, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA, HP.**

Ref no. 175 of 2003.
Instituted on. 30.5.2003.
Decided on. 17.4.2009.

Asha Chauhan D/o Shri Kamla Nand c/o Shri L.S Kapatia Village Chuhabag, P.O Khaneri, Tehsil Rampur, District Shimla, HP.

..Petitioner

Vs.

The Executive Engineer, HPSEB Kushang, construction circle Jeori, Rampur, District Shimla, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri M.S Kanwar, Ld. Csl.

For respondent: Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“क्या अधीक्षण अभियन्ता, कशांग कन्सल्टेशन सर्कल, हि0 प्र0 राज्य विद्युत बोर्ड ज्यूरी, तहसील रामपुर बुशैहर, जिला शिमला द्वारा कुमारी आशा चौहान से कार्यलय में कम्प्यूटर का कार्य, कार्य आदेश (वर्क ऑर्डर) की प्रणाली के तहत करवाया जाना और उसे दैनिक दर से वेतन भुगतान करना तथा कुमारी आशा चौहान द्वारा इस तरह काम करने के पश्चात् कामगार न मानना और कुमारी आशा चौहान को उपरोक्त नियोजक द्वारा दिनांक 1-7-2002 से कार्य से हटाना उचित है अथवा अनुचित ? यदि अनुचित है, तो कुमारी आशा चौहान किस राहत एवं क्षतिपूर्ति की हकदार है ?”

2. The petitioner has filed a claim asserting therein that she was engaged by the respondent as computer operator on daily wages basis against the vacant post on April, 2000 and that the petitioner continuously worked with the respondent and completed 240 working days in a calendar year and the petitioner was given fictional breaks in between by the respondent and allowed her to continue work and that the petitioner being the workman is entitled for the protection of the provisions of ID Act, 1947 and that against the termination, the petitioner has filed the representation to the respondent but no action was taken by the respondent for the reengagement and as such prayed for reinstatement in service with all benefits, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, estoppel and the petitioner is not the workman. On merits, it is contended that the petitioner was not the employee of the respondent rather she had been performing the job of computer operator as a contractor on work order basis during different spells and that there was no relationship of the petitioner as an employee of the respondent, who was awarded the work as a contractor on mutually agreed terms and conditions and rate specified therein which was cancelled at any time without assigning any reason, hence the question of termination of the petitioner does not arise at all and as such prayed for the dismissal of the claim as prayed for.

4. No rejoinder filed. The following issues were framed by this Court on 24.10.2004.

1. Whether the services of the petitioner were wrongly terminated by Executive Engineer, Kashang construction Division, HPSEB Jeori vide order dated 1.7.2002? If so, its effect?OPP

2. If issue no.1 is proved, whether the petitioner is entitled for relief claimed? ...OPP

3. Whether the applicant is not a workman? ...OPR

4. Relief.

5. I have heard the learned counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	No.
Issue no.2	Not entitled for any relief as claimed.
Issue no.3	Yes.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1:

7. Coming to issue no.1, the petitioner has examined herself as PW-1, who has stated that she was appointed as computer operator in April, 2001 by the respondent whose interview was held and after her selection, she was posted in the office and after doing plus two, she did two years computer course through IGNOU. She was doing accounts work and all clerical works including typing, who worked till July, 2002. No notice nor compensation was paid to her, when she was removed from service and Desraj was working as electrician. She approached the respondent for reengagement but they told her to visit after seven or ten days and as such prayed for reinstatement with all consequential benefits.

8. To rebut the case of the petitioner, the respondent examined RW-1 Er. Sunil Lal, who has stated that the petitioner was engaged as computer operator at Jeori on contract basis, who was the contractor and they issued the work order to contractor for three months and the contractor worked for 12 months 26 days and they issued the work order with a specific condition that work would be cancelled at any time without assigning any reason and proved the copies of contract and applications Ex. R-1 to Ex. R-9 and the petitioner was removed after completion of last work order and no work order has been issued thereafter and proved the working days of the petitioner Ex. R-10.

9. The case of the petitioner is that she was engaged as computer operator by the respondent Board and has completed 240 working days in a calendar year and her termination without notice and compensation under section 25-F of the ID Act, 1947 is improper and illegal.

10. On the contrary, the respondents contend that the petitioner was engaged on the work order basis issued from time to time and the petitioner was not the workman under the Industrial Disputes Act, 1947 whose appointment was purely on the basis of work order, hence she is not entitled to any relief as prayed for.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it stands proved on record that the petitioner was appointed as computer operator by the respondent Board in the year 2001 on work order basis as is evident from Ex. R-1, Ex. R-3, and Ex. R-5 placed on record. It also stands proved on record that the petitioner had approached the respondent for reengagement on the basis of work orders Ex. R-2, Ex. R-4 and Ex. R-6 placed on record and the work orders were issued to the petitioner from time to time by the respondent and even the petitioner herself has admitted in

her cross-examination that she was given work on the basis of work order subject to issuance of work order. The petitioner has also admitted that last work order was issued in her favour for 90 days only and after 30.6.2002 nobody was assigned work order for computers. Moreover, the petitioner has failed to prove on record that she was engaged as computer operator on daily wages basis by the respondent Board. Since the respondent have proved on record that the petitioner had worked on the basis of work orders issued from time to time by the respondent Board being the computer contractor and obviously therefore, I have no hesitation in coming to the conclusion that the services of the petitioner have not been illegally and wrongly terminated by the Executive Engineer Kashang, construction Divison HPSEB Jeori vide order dated 1.7.2002 as the question of termination of services of the petitioner does not arise at all being not the workman under the provisions of Industrial Disputes Act, 1947. Accordingly, the issue is decided in favour of respondent and against the petitioner.

Issue No.2:

13. Since I have held under issue no.1 above, that the petitioner had worked as a computer contractor on the basis of work orders issued by the respondent Board from time to time, hence the petitioner is not entitled to any relief as claimed by her being not the workman. Accordingly, issue no.2 is decided in favour of respondent and against the petitioner.

Issue No.3:

14. In support of this issue, the respondent has proved on record that the petitioner was not appointed on daily wages, who was appointed on the basis of work orders having been issued by the respondent Board from time to time and she worked as computer contractor on the basis of work order and obviously therefore, it can safely be held that the petitioner is not a workman under section 2(s) of the Industrial Disputes Act, 1947, who worked as computer contractor on the basis of different work orders issued by the respondent Board from time to time. Accordingly, issue no.3 is decided against the petitioner and in favour of the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S. MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Ref. No. 18 of 2005.
Instituted on. 1.1.2005.
Decided on. 17.4.2009.

Rewa Dass S/o Shri Mansa Ram R/o Village Sainj P.O Pandoa Tehsil Sunni District Shimla, H.P.

..Petitioner

Versus

The Executive Engineer, HPPWD (B&R) Division Kumarsain, District Shimla, HP.

..Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri R.K Khidta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA

AWARD

1. The following reference has been received from appropriate government by this court for adjudication:—

“कि क्या अधिशासी अभियन्ता, हिमाचल प्रदेश लोक निर्माण विभाग (बी0एण्ड आर0) मण्डल, कुमारसैन, जिला शिमला द्वारा कामगार श्री रेवादास सपुत्र स्वर्गीय श्री मनसा राम को दिनांक 31-8-1990 के पश्चात् कार्य पर अनुपस्थित रहने के कारण नौकरी से निकाला जाना उचित व न्यायसंगत है ? यदि नहीं, तो श्री रेवा दास सपुत्र स्वर्गीय श्री मनसा राम कामगार किस वेतन, वरिष्ठता, सेवा लाभ एवं राहत का पात्र है ?”

2. The petitioner has filed a claim asserting therein that he was engaged as engaged as black smith on daily wages basis in the month of December, 1986 by the respondent, who worked as such upto Sep. 1990 at different places without break and that the petitioner has completed 240 days in a calendar year and the services of the petitioner have been orally terminated by the respondent without assigning reason and without complying the mandatory provisions of the Industrial Disputes Act, 1947 and that after the oral termination, the petitioner visited the office of the respondent number of times for reengagement vide representation dated 15.3.1991, 22.5.1992 and 10.8.1993 but in vain and that the respondent has also engaged other new persons and the petitioner was not called back in job and even juniors to the petitioner are also working with the respondent as black smith which is also violation of principle of last come first go and that the petitioner has every right to continue in the job till the date of superannuation and the action of the respondent is against the provisions of Industrial Disputes Act, 1947 and that the petitioner is a workman as defined in the Industrial Disputes Act, 1947, who has completed 240 days in the preceding calendar year and as such the respondent department was duty bound to follow the provisions of I D Act, 1947 as no notice nor compensation was paid to the petitioner by the respondent before terminating the services and that the oral termination order passed by the respondent is illegal, unjust, arbitrary and against the principle of natural justice and that the respondent department has not paid the wages to the petitioner w.e.f. 1.9.1990 to 5.9.1990 for which the respondent is legally bound to pay the wages to the petitioner with interest and as such prayed for reinstatement with full back wages and other consequential service benefits, hence this claim.

3. The respondent resisted and contested the claim of petitioner, which filed reply interalia raising preliminary objections of maintainability, time barred and estoppel. On merits, it is contended that the petitioner was not engaged as black smith on daily wages in the month of May, 1987 and then the petitioner casually attended the work with the department up to 8/1990 and the petitioner has completed 240 days during the year 1988, who has not completed 240 days in any calendar year and that the services of the petitioner has never been terminated by the respondent but the petitioner himself left the job of his own and the petitioner never approached the respondent for his reengagement and that the petitioner voluntarily left the work after August, 1990 and that the petitioner has no right to continue in job till the date of superannuation as he did not come in the work and failed to fulfill the requirement of Industrial Disputes Act, 1947, who has not regularly worked with the respondent and that the petitioner has worked with the respondent upto 31.8.1990 and did not turn up on the work, hence the salary of five days does not arise and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 30.08.2005 and issue no.1 & 2 are recast on 27.10.2005.

1. Whether the termination of Shri Rewa Dass w.e.f. 31.8.1990 by Executive Engineer, HPSEB Kumarsain due to his absence from duty is illegal and against the provisions of Industrial Disputes Act, 1947?

..OPP

2. If issue no.1 is proved in affirmative, whether the petitioner is entitled for the relief claimed?

...OPP

3. Whether the claim petition is not maintainable?

..OPR

4. Whether the claim petition is time barred?

..OPR

5. Whether the applicant is estopped to file the present petition due to his own acts, deed and conduct?
....OPR
6. Relief.
6. I have heard the learned counsels for the parties and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues area as under.

Issue No.1	Yes.
Issue No.2	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue No.3	No.
Issue No.4	No.
Issue No.5	No
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1:

8. Coming to issue no.1, the petitioner has examined two PWs in all. PW-1 Shir Rewa Dass has stated that he was engaged as beldar (Black Smith) in Jalog Sub division w.e.f 1986 to Sep. 1990 but no payment was made for 1990, who worked continuously, who was removed from service by the department, who visited the office of respondent for reengagement but he was not employed and his representations are mark X to Z and his juniors S/Shri Birbal and Yuv Raj are still working. No notice nor compensation was given to him at the time of his removal.

9. PW-2, Keshav Ram, Senior Assistant, HPPWD, who was examined on 12.5.2006 but the witness was discharged for want of complete record, who was reexamined on 13.7.2007. The witness has stated that the petitioner has not worked in December, 1986 and no muster roll has been issued in Jalog Division in 1986 and the petitioner had worked from Jan. 1987 to December, 1989 and Birbal has been engaged in Jan. 1989 and proved the mandays chart of the Birbal Ex. PA, who is working as black smith and is still working and Yuv Raj was also engaged in Jan. 1989 and is still working and the mandays chart of Yuv Raj is Ex. PB. The witness has admitted that the Yuv Raj and Birbal are junior to the petitioner. No notice nor compensation was paid to the petitioner.

10. To rebut the case of the petitioner, the respondent examined Er. Subhash Sharma, who has stated that the petitioner was engaged as daily wages labourer in the year May, 1987 as Black Smith, who continued till August, 1990 and proved the mandays chart and copies of muster rolls Ex. RA to RC and the petitioner has left the job in the month of Sep. 1990 and the department has not terminated the services of the petitioner, who abandoned the job himself.

11. The case of the petitioner is that he being a daily wages beldar having worked for more than 240 days in a calendar year preceding his termination and even juniors to him are still continuing with the respondent and as such his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F, 25-G & H of the Industrial disputes Act, 1947.

12. On the contrary, the respondent contends that the petitioner is not entitled to any benefits under the Industrial Disputes Act, 1947 as he was not removed by the department but left the job himself without informing his officers, who did not approach the department for his reengagement, hence there is no necessity to serve a notice under section 25-F of the Industrial Disputes Act, 1947 as he abandoned the job of his own.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, the petitioner was engaged by the respondent as daily wages Black Smith in the year 1987, who continued with the respondent till 1990 as per mandays chart Ex. RA placed on record from which is also clear that the petitioner has completed 240 working days in the year 1988 which fact has

also been admitted by RW-1 Er. Subhash Sharma in his cross examination. It is well settled incase titled as **State of HP & Ors V/s Bhatag Ram & Anr. as reported in latest HLJ 2007 (HP) 903.** in which it was held that :—

“Continuing of 240 days not necessary in 12 calendar months. It is not necessary to workman to complete 240 days during 12 months for taking the benefits of section 25-G & 25-H of the Act.”

15. The perusal of this ruling makes it clear that it is not necessary that the workman must complete 240 working days in a preceding calendar year of his termination. However, if he completes 240 working days in any calendar year preceding his termination that period will be counted for reckoning of requisite period of working days to cover his case under section 25 F of the Industrial Disputes Act, 1947. In the instant case, the petitioner has proved on record that he had worked for more than 240 days in calendar year 1988 as is evident from Ex. RA and moreover, no notice nor any compensation was paid to the petitioner at the time of his termination. It is significant to note that the respondent has failed to prove on record by leading cogent, plausible and overwhelming evidence on record to show that the petitioner abandoned the job of his own. By mere alleging that the petitioner abandoned the job of his own is not sufficient to prove their stand especially when there is nothing on record which could show that the respondent ever sent letters or notices to the petitioner to resume his duties.

16. Now, adverting to the other aspect of the case, it has also come on record that juniors to the petitioner are still working with the respondent as the petitioner was engaged in the year 1987 as daily wages Black Smith, who continued as such till 1990 whereas Shri Birbal and Yuv Raj (Black Smith) were engaged by the respondent department in the month of Jan. 1989 as is evident from the statement of PW-2 Shri Keshav Ram, who has admitted in his evidence that Birbal and Yuv Raj are the juniors to the petitioner and as such it is clear that the employer had retained the persons junior to the petitioner Birbal and Yuv Raj and thus violating the provisions of section 25-G of the Act. Here I am fortified with a view taken by our own Hon'ble High Court **in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr.** in which it was held that :—

“Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act.”

And obviously therefore, it can safely be concluded that the termination of services by ignoring the seniority of the petitioner and retaining the junior to him in service is bad in the eyes of law and also the provisions of Industrial Disputes Act, 1947. No doubt that the respondent has tried to establish on record that the petitioner has abandoned the job of his own but there is nothing on record which could show that the petitioner has left the job of his own. However, it is well settled incase titled as **State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903** in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to the entire evidence on record and on the strength of above cited rulings, it can safely be concluded that the termination of services of Shri Rewa Dass w.e.f 31.8.1990 by Executive Engineer, IPH Kumarsain is illegal and against the provisions of Industrial Disputes Act, 1947 as no notice nor any retrenchment compensation was paid to the petitioner by the respondent at the time of his termination and as such the termination of petitioner by the respondent w.e.f. 31.8.1990 held illegal and unjustified without complying with the provisions of ID Act, 1947. Accordingly, issue no.1 is decided in favour of petitioner and against the respondent.

Issue No.2:

17. Since I have held under issue no.1 above, that the services of the petitioner have been illegally terminated by the respondent without notice or payment of compensation, hence the petitioner is held entitled to reinstatement in service with seniority and continuity from the date of illegal retrenchment. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3:

18. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No.4:

19. In support of this issue, no evidence was led by the respondent being the legal issue. However, I have scrutinized the record of the case and observed that there is no limitation under the I.D Act as it was held by their

lordship of Hon'ble Supreme Court as reported in (1999) 6 SCC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another. In which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

And as such on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

Issue No.5:

17. In order to prove this issue, no evidence was led by the respondent as to how the petitioner is estopped from filing the petition by his own act, deed and conduct nor it was pressed during the course of arguments. In view of no such evidence on record, this issue is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 5, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S. MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA.**

Ref no. 109 of 2002.
Instituted on. 23.4.2002.
Decided on. 17.4.2009.

Lekh Ram Carpenter S/o Shri Daulat Ram C/o Shri Devki Nand Sharma R/o Village Kalyanpur, P.O & Tehsil Rampur, District Shimla, HP.

...Petitioner

Vs.

The Regional Manager, HRTC, Rampur District Shimla, HP.

..Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Bhupinder Thakur, Ld. Csl.

For respondent : Ms. Rita Thakur, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

"Whether the termination of the services of Shri Lekh Ram Carpenter w.e.f. 1.4.1999 by the Regional Manager, HRTC Rampur Bushehr District Shimla, HP without complying the section 25-F/25-N of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above workman is entitled to?"

2. The petitioner has filed a claim asserting therein that he was employed by the respondent as carpenter, who worked continuously without any interruption to the entire satisfaction of his superiors till 31.3.1999 after putting more than 240 days of service for each completed year and that the petitioner was removed from service w.e.f. 1.4.1999 without complying with the relevant provisions of Industrial Disputes Act, 1947 and that no notice nor compensation was paid to the petitioner at the time of his removal and that the termination of the petitioner is illegal and that the petitioner could not get employment despite efforts and is unemployed and as such prayed for reinstatement with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the petitioner was engaged as carpenter helper on contract basis for 60 days vide order dated 25.10.1998 as per rates fixed by the Deputy Commissioner, Shimla and an agreement was executed between the petitioner and respondent for the period of 60 days and after the expiry of agreement, the petitioner worked for 20 days more but no agreement was made with the petitioner. It is denied that the petitioner has completed 240 working days and that the petitioner had executed an agreement with the respondent at the time of his appointment as carpenter helper on contract basis and the petitioner had given undertaking that he would not claim for his regularization of service and as such prayed for the dismissal of the claim.

4. No rejoinder filed. The following issues were framed by this Court on 22.11.2005.

1. Whether the services of Shri Lekh Ram carpenter has been wrongly terminated by the respondent without complying the provisions of ID Act, 1947? If so, its effect.

..OPP

2. If issue no.1 is proved in affirmative, to what relief of service benefits, the petitioner is entitled to?

..OPP

3. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1:	No.
Issue no.2:	Not entitled to any relief.
Relief:	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

7. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was engaged as carpenter on 11.1.1998 in HRTC Rampur, who worked till 31.3.1999 and his experience certificate is Mark X. No break in the work was given to him, who was removed from service on 1.4.1998. No notice nor compensation has been paid to him, who approached the respondent for his reengagement but in vain and as such his removal is illegal, hence prayed for reinstatement with all benefits and three juniors to him (Tyre Man) were engaged.

8. To rebut the case of the petitioner, the respondent has examined two RWs in all. RW-1 Shri Devinder Kumar, R.M HRTC has stated that the petitioner had worked from 11.1.1998 to 31.3.1998 at Rampur and certificate mark X was issued by him but the year 99 was wrongly mentioned instead of 31.3.1998 in the certificate and the petitioner obtained the certificate from him stating that the work in Kule Dam was in progress and he would get the job, if the experience certificate be given to him, hence HRTC issued him a show cause notice on the basis of the certificate

which he had replied vide mark Z and the date in the certificate as 31.3.1999 has been wrongly mentioned instead of 31.3.1998.

9. RW-2 Shri Ram Krishan has stated that the petitioner was engaged as carpenter on 11.1.1998, who worked till 31.3.1998. The contract with the petitioner was initially for sixty days and proved the copies of contract and muster roll Ex. R-1 to R-4 and the petitioner worked for 80 days as per record.

10. The case of the petitioner is that he being a daily wages carpenter having worked for 240 working days with the respondent and his termination without notice and compensation is illegal and as such he is entitled for the protection of section 25-F of the ID Act, 1947.

11. On the contrary, the respondent contends that the petitioner was engaged as carpenter on contract basis only for 60 days and on the expiry of the contract and after completion of eighty days, the services of the petitioner were terminated, hence the case of the petitioner does not fall under section 25-F of the ID Act, 1947.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged on the basis of contract having been executed between the petitioner and the respondent department Ex. R-4 placed on record. It is also proved on record that the petitioner had worked for 21 days in Jan. 1998, 28 days in Feb. 1998 and 31 days in March, 1998 as is evident from the copies of muster rolls Ex. R-1 to Ex. R-3 placed on record and as such worked for only eighty days in toto. There is nothing on record which could show that the petitioner has put in more than 240 working days preceding his termination, whose appointment purely on the basis of agreement executed between the parties vide which the petitioner has agreed to work with the respondent on the basis of terms and conditions prescribed in the contract Ex. R-4. No doubt that the petitioner tried to set up his claim on the basis of experience certificate mark X, issued to him by the Works Manager and RW-1 Shri Devinder Kumar now RM HRTC, Kullu, who appeared in the witness box and deposed that the year 1999 has been wrongly mentioned in the certificate instead of 1998 for which the HRTC issued him a show cause notice and thus, it is clear that RW-1 Devinder Kumar now RM HRTC, Kullu has clarified that the year 1999 was wrongly mentioned in the certificate instead of the year 1998. Even if this certificate was wrongly issued by RW-1, it does not give rise to the inference that the petitioner has completed 240 working days in a calendar year preceding his termination especially when there is nothing on record which could show that the petitioner has completed 240 working days in a calendar year preceding his termination. Moreover, it stands proved on record that the petitioner had only worked for 80 days with the respondent on contract basis. In view of no evidence on record by the petitioner to prove his working days, it is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, hence the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

14. Thus, on the strength of the above cited ruling and having regard to the entire evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947 and as such, this issue is decided against the petitioner and in favour of the respondent.

Issue No-2

15. Since, I have held under issue no.1 above, that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, issue no.2 is answered in negative.

Relief

As a sequel to my above discussion and findings on issue no.1 & 2, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered accordingly. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 17th day of April, 2009 in presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, H.P.**

Ref no. 295 of 2003.
Instituted on 7.10.2003.
Decided on. 30.4.2009.

Prem Chand S/o Shri Budh Ram R/o Village & P.O Bhavgudi, Tehsil Kasauli, district solan, HP.

..Petitioner.

Vs.

The Executive Engineer, I.& P.H Division, Solan, District Solan, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri O.P Sharma Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“क्या श्री प्रेम चन्द सपुत्र श्री बुद्ध राम, दैनिक वेतन भोगी बेलदार को अधिशासी अभियन्ता, सिंचाई एवं जन स्वास्थ्य मण्डल, सोलन, हि0 प्र0 द्वारा दिनांक 1-9-98 से औद्योगिक विवाद अधिनियम, 1947 में दिए गए प्रावधानों की अनुपालना किए बिना नौकरी से निकाला जाना उचित एवं न्यायसंगत है ? यदि नहीं तो कामगार किस राहत एवं क्षतिपूर्ति का पात्र है ?

2. The petitioner has filed a claim asserting therein that he was working as daily wages beldar under the employer w.e.f. 1.2.1992 and continued to work as such upto 31.8.1998 and then the respondent terminated his services on 1.9.1998 without any notice, reason and charge sheet and that the respondent has allowed to continue on work S/Shri Manoj Kumar, Jai Gopal, Diwan Chand, Charan Dass and Shobha Ram, who are juniors to the petitioner and that the petitioner had worked with the respondent for more than 240 days and as such he is entitled for reengagement under section 25-H and that the employer has not followed the principle of last come first go and that the termination of the petitioner w.e.f. 1.9.1998 is illegal as no notice nor wages were paid to him and that no seniority list was maintained before effecting termination and as such prayed for reinstatement in service alongwith back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia contending that the petitioner Shri Prem Chand worked as daily paid beldar w.e.f. 1.2.1992 to 31.8.1998. It is denied that the services of the petitioner were terminated by the respondent, who left the job of his own. It is admitted that S/Shri Manoj Kumar, Jai Gopal, Diwan Chand, Charan Dass and Shobha Ram are the juniors to the petitioner as these workers continue to work because they have not left the work and that the petitioner has not worked for 240 days in any calendar year during his service w.e.f. 1.2.1992 to 31.8.1998 and as such there was no illegal termination of the petitioner, who left the work of his own and as such prayed for the dismissal of the claim as prayed for.

4. In the rejoinder, the petitioner has controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 2.9.2005.

1. Whether the termination of the services of the petitioner w.e.f. 1.9.1998 by the respondent is legal and justified?
..OPP

2. If issue no.1 is not proved, to what relief of service benefits, the petitioner is entitled to?
..OPP

3. Whether the petitioner has abandoned the job as alleged?
..OPR

4. Relief.

6. I have heard the Ld. Csl for petitioner and Ld. DDA for respondent and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no. 2	Entitled to reinstatement in service with seniority and continuity but without back wages.
Issue no.3	No.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged as Keyman at Masool Khana, Parwanoo in 1992, who had worked in the same capacity till 1998, who was removed from service by the Supervisor in 1998. No notice nor payment of compensation in lieu of notice has been given to him and there was no allegation against him and even he was never charge sheeted and the work of Keyman is still available with the department, who does not know whether there was any seniority list of the workmen by the department. S/Shri Manoj Kumar, Jai Gopal, Diwan Chand, Charan Dass and Shobha Ram are juniors to him, who were retained by the department and they were given the duties of taking bajri, to carry the water pump or other machinery for repairs and to lay down GI pipes for water supply and as such prayed for reinstatement and compensation for his illegal termination.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Pardeep Vaidya has stated that the petitioner was engaged as daily wages beldar on 1.2.1992, who continued as such till 31.8.1998 and then he abandoned the job of his own, who was never removed from service by the department and proved the copies of muster rolls Ex. RA to Ex. RE. The petitioner has not completed 240 working days in any of the calendar year preceding his abandonment.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in each calendar year and even juniors to him are still working with the department and his termination without notice and without compensation is illegal and improper which is liable to be set aside by reinstating him in service alongwith all consequential benefits.

11. On the contrary, the respondent has controverted the case of the petitioner and has submitted that the petitioner has not completed 240 working days in any calendar year preceding his termination, who was not terminated from service, who left the job of his own and therefore, the petitioner has no case for his reinstatement alongwith all consequential benefits in his favour.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it is not disputed that the petitioner was engaged as daily wages beldar by the respondent department w.e.f 1.2.1992, who remained as such till 31.8.1998 with the respondent department. It is also admitted by RW-1 Er. Pardeep Vaidya that the petitioner had completed 266 days in a twelve

calendar months preceding his termination. Now turning to the legal aspect of the case, it is also admitted by the respondent in their reply that S/Shri Manoj Kumar, Jai Gopal, Diwan Chand, Charan Dass and Shobha Ram are the juniors to the petitioner, who are still working with the respondent department and even this fact has admitted by RW-1 Er. Pardeep Vaidya that the juniors to the petitioner are still continuing with the respondent department. Now, it is clear that the respondent department has engaged the daily wages worker by ignoring the petitioner as no notice nor any letter was issued to the petitioner by the respondent to resume his duties which is clear violation of section 25-G & H of the Industrial disputes Act, 1947. Here I am fortified with a view taken by our own Hon'ble High Court in CWP No. 555 of 2007 dated 12.9.2007 incase titled as Vijay Kumar Vs. The Executive Engineer & Anr. in which it was held that :—

“Where the employer had retained the persons junior to the petitioner, namely Med Ram and Sunil Kumar, thus violating the provisions of section 25-G of the Act.”

And obviously therefore, it can safely be concluded that the termination of services of the petitioner by the respondent w.e.f. 1.9.1998 is improper and unjustified and liable to be interfered with. Accordingly issue no.1 is answered in favour of the petitioner and against the respondent.

Issue No.2 :

14. Since I have held under issue no.1 above that the services of the petitioner were illegally terminated by the respondent without following the mandatory provisions of Industrial Disputes Act, 1947, hence the petitioner is held entitled for his reinstatement in service with seniority and continuity. However the petitioner is not entitled for back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, the issue is decided in favour of the petitioner and against the respondent.

Issue No.3:

15. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it is well settled in State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903 in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to no evidence on this issue of abandonment, it can safely be concluded that the petitioner has not left the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge,

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA.**

Ref No:- 14 of 2006.
Instituted On:- 20.2.2006.
Decided On: 6.4.2009.

Surinder Singh S/o Shri Vijay Singh R/o Village Kumsu, P.O Nogli, Tehsil Rampur, District Shimla, HP.

..Petitioner

The Executive Engineer, HPSEB, Division Rampur, Distt. Shimla, HP.

..Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Ms. Rita Thakur, Ld. Csl.

For respondent: Ms. Sharmila Patial, Ld. Csl

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of services of Shri Surinder Singh S/o Shri Vijay Singh workman by the Executive Engineer, HPSEB, Division Rampur Bushehr, District Shimla, HP w.e.f. 25.5.1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. The petitioner has filed a claim asserting therein that he was engaged as beldar w.e.f. 2nd Sep. 1996 with the respondent, who worked continuously and without any break till 24.5.1999 and then the services of the petitioner were orally terminated on 25.5.1999 by the respondent and the petitioner visited the office of the respondent several times for his reengagement but in vain and that the action of the respondent is totally illegal, arbitrary and in violation of section 25-F of the Industrial Disputes Act as no notice was served upon the petitioner nor any compensation was paid in lieu of the services rendered by him with the respondent and many junior workmen are retained by the respondent who are still working with the respondent and that the action of the respondent is against the principle of last come first go as the petitioner has completed 240 working days in twelve calendar months in preceding year from the date of termination and that the petitioner worked with dedication and sincerity and there was no complaint regarding the work of the petitioner and that the respondent has indulged in pick and choose policy in contravention to the provisions of Industrial disputes Act, 1947 and as such prayed for reinstatement in service with all consequential benefits, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of non-joinder of necessary party, no cause of action against the respondent, estoppel and time barred. On merits, it is contended that the petitioner was initially engaged on 2.9.1996, who worked upto 24.5.1999 as and when the work was available with the respondent with certain interruption in between and after completion of work, the services of the petitioner could not be utilized by the respondent without work and as such no assurance was given to the petitioner for reengagement and that the petitioner was engaged for specific work, who had not completed 240 days in a calendar year, hence there was no requirement for complying with the provisions of ID Act, 1947 and that the petitioner was never completed uninterrupted 240 days in a calendar year, who was engaged against specific work and after the completion of work, the services of the petitioner automatically came to an end and as such prayed for the dismissal of the claim

4. No rejoinder filed. The following issues were framed by this Court on 7.6.2007.

1. Whether the services of the petitioner have been illegally terminated by respondent without complying with the provisions of I.D Act, 1947? If so, its effect?

.....OPP

2. If issue No-1 is proved in affirmative, to what relief the petitioner is entitled to?

....OPP

3. Whether the present petition is not maintainable and is barred by limitation?

...OPR

4. Relief.

5. I have heard the Ld. Counsels for the parties and also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1:	No.
Issue No.2:	Not entitled to any relief.
Issue No.3:	No.
Relief:	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

7. Coming to issue no.1, the petitioner has examined two PWs in all. PW-1 Shri Surinder Singh stepped into the witness box, who has stated that he was engaged by respondent on 2.8.1996 as beldar at Rampur where he worked till 24.4.1998 and then he was shifted to Sub Division Jagat Khana where he worked till Sep. 1998 and in Sep. 1998, he came back to Rampur Division where he worked till 24.5.1999 and then he was removed from service. No notice nor compensation has been given to him, who worked for 240 days in each calendar year. His junior Shri Nihal Singh is still working and as such prayed for his reinstatement.

8. PW-2, Shri Roop Ram Bhardwaj, has stated that the petitioner was engaged in Jagat Khana, Sub Division w.e.f. 26.6.1998 where he worked till 24.9.1998, who has worked for 29 days in June-July, 1998, 30 days in July-August, 1998 and 27 days in August-Sep. 1998.

9. On the contrary, the respondent has examined RW1 Er. M.L. Bansal, who has stated that the petitioner was engaged as daily waged beldar on 2nd Sep. 1996, who worked as such till 24.5.1999, who was engaged for repairs and maintenance purpose, who has not completed 240 working days in preceding calendar year, who also worked in Nogli and other completion of work and left the job. No juniors of petitioner are retained in service by the respondent.

10. The case of the petitioner is that he was engaged as beldar on daily wages by the respondent department, who has completed more than 240 working days preceding his termination from service and even his juniors are still working with the respondent and his termination without notice and compensation is against the provisions of Industrial disputes Act, 1947 and as such his services is liable to be reengaged along-with all retrospective benefits.

11. On the contrary, the respondent contends that the petitioner was engaged as casual labourer for a seasonal work, who has not completed 240 working days in a calendar year and since the services of the petitioner were disengaged on the completion of work, who was appointed according to the need of work and as such, the petitioner has no right to post being casual labourer.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner was engaged on 2.9.1996, who worked till 25.5.1999 but has not completed 240 working days. It is also proved on record that the petitioner was engaged for repairs and maintenance purpose for specific period. Moreover, there is nothing on record which could show that the petitioner has put in more than 240 working in any calendar year preceding his termination. No doubt, that the petitioner has tried to establish on record that he was transferred from Rampur to Jagat Khana by the respondent where he worked three months but there is nothing on record which could show that the petitioner was actually transferred/shifted even PW2 Shri Roop Ram has stated in cross-examination that there is no reference in the muster roll that the petitioner was transferred from Rampur to Jagat Khana meaning thereby that the petitioner has left the job at Rampur and then worked at Jagat Khana as a fresh. The petitioner has failed to prove on record that he was transferred by the respondent and has completed 240 working days in a calendar year preceding his termination, hence the case of the petitioner does not fall within the ambit of section 25-F of the Industrial Disputes Act, 1947. Apart from it, there is nothing on record which could show that the junior to petitioner are still continuing with the respondent. It is significant to note that no record from the respondent was summoned in order to show that the juniors to the petitioner are still continuing with the respondent as beldars/helpers on daily wages. Their joining record has not been proved on record by the petitioner. It is well settled that where the workman has not produced any evidence to show that he had worked for more than 240 working days preceding his termination and that no evidence has been led in order to show that his juniors are still working with the respondent, hence the petitioner is not entitled to any protection under the provisions of the Industrial Disputes Act, 1947. Here I am fortified with a view taken by their lordships of Hon'ble

Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amarsinh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

14. Thus, on the strength of the above cited ruling and having regard to the evidence on record, it can safely be concluded that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947 nor any junior to the petitioner is engaged and retained by the respondent and as such, this issue is decided against the petitioner and in favour of the respondent.

Issue No.2:

15. Since, I have held under issue no.1 above, that the services of the petitioner have not been illegally terminated by the respondent without complying the provisions of section 25-F of the Industrial Disputes Act, 1947, hence the petitioner is not entitled to any service benefits. Accordingly, issue no.2 is answered in negative.

Issue No.3

16. In support of this issue, no evidence was led by the respondent as to how the petition is not maintainable and barred by limitation nor it was pressed during the course of arguments. However, I find nothing wrong with the petition which is perfectly maintainable in the present form and the petition is not barred by limitation as there is no limitation under the I.D Act as it was held by their lordship of Hon'ble Supreme Court reported in (1999) 6 SC 82 case titled as Ajayab singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. In which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

And as such on the strength of this ruling, it can safely be concluded that this petition is maintainable and not barred by limitation. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Relief:

As a sequel to above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th day of April, 2009 in presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA.**

Ref no: 116 of 1998.
Instituted on: 8.6.1998
Decided on: 20.4.2009.

Rajesh Bhaik S/o Shri Sukh Dayal Bhaik R/o Village Bhareri, P.O Kotgarh, Tehsil Kumarsain, District Shimla HP.

..Petitioner.

Versus

Project Manager M/s NJJV Kotla, Tehsil Rampur District Shimla, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Jagat Singh Shyam, Ld. Csl.

For respondent: Shri Vijay Pandit, Ld. Csl..

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of services of Shri Rajesh Kumar Bhaik, Time Keeper by the Management of M/s Nathpa Jhakri Joint Venture, Kotla P.O Jeori ,Tehsil Rampur, District Shimla HP on the basis of Medical Certificate and thereafter paying his legal dues is legal and justified? If not, what relief Shri Rajesh Kumar Bhaik is entitled?”

2. The petitioner has filed a claim asserting therein that he was engaged as Time Keeper by the respondent on 1.2.1994, who joined his duties on the date of appointment at NJJV, office at site Daj, who was promoted as Personnel Assistant in the year 1996 and was discharging his duties as clerk with the respondent without any break and that the petitioner was illegally terminated on 14.7.1997 and that on 27.6.1997, the petitioner was transferred to Wadhal site by verbal order of Senior Personnel Manager and as such the petitioner requested the management to keep him in the general shift and not in the night shift inside tunnel as the petitioner is a patient of Schizophrenia, who was not able to perform his duties at Wadhal but the request of the petitioner was not considered by the management and the petitioner was verbally transferred from Daj to Wadhal on 27.6.97, who joined his duties at Wadhal and the site Incharge assigned the duties in the night shift and also inside the tunnel. The petitioner again requested the site Incharge Mr. Rejora to shift him in the general shift but in vain and that on 7.7.1997, the site Incharge directed the petitioner to go to Kotla office saying that his services were required there without any official order and as such the petitioner reported at Kotla and also applied for leave from 8.7.1997 to 12.7.1997, which was sanctioned vide annexure B and that 13.7.1997 the petitioner reported his duties at Wadhal but the site Incharge did not allow him to join the duties and directed him to join at Kotla Office and on 14.7.97 the petitioner was informed by Mr. S. R. Mukhrjee that he was terminated from service and that on 15.7.97, the petitioner gave a written representation to the Project Manager at Kotla vide annexure C but no action was taken by the Project Manager and that the petitioner had worked under the employment of respondent for a continuous period of 3 ½ years without any break till 14.9.97 when his services were terminated which is illegal and arbitrary and without following the provisions of law and that the petitioner at the time of his termination was drawing the monthly salary of Rs.6000/- and that the termination of the petitioner is illegal, null, void and inoperative for non compliance of law as the work and conduct of the petitioner was good and satisfactory during the period of service and that the petitioner is a workman and the respondent is the employer as envisaged under the Industrial Disputes Act and that the cause of action arose to the petitioner against the respondent on the date of his illegal termination and that the termination of petitioner is illegal, null and void and the management has followed the policy of hire and fire in a most arbitrary manner especially when the petitioner has completed 240 days in each year of service and as such prayed for reinstatement with retrospective effect along with full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia contending that the termination of the petitioner was not illegal and arbitrary which was absolutely legal, just and fair and that the respondent was well within its legal rights to transfer the petitioner keeping with the service condition of the petitioner and that a bare perusal of appointment letter issued to the petitioner reveals that (a) the workmen could be transferred and posted at any of the site of project and anywhere in India (b) that his services could be terminated by giving a month notice or salary in lieu thereof and as such statement of money paid to the petitioner is submitted herewith which clearly reflects that notice period, salary etc. has been duly paid to him and the termination is legal which is also bonafide as the petitioner was suffering from schizophrenia and incompetent to execute the duties assigned to him, hence no unfair labour practice has been resorted to by the management by terminating the services of the petitioner and that the petitioner in filing the case is taking advantage of his own wrongs and as such the relationship of the workmen and employer has seized between the parties, hence prayed for the dismissal of the petition with costs.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 19.9.2001.

1. Whether the termination of the services of the petitioner as mentioned in the reference is illegal and unjustified? If so, what effect?

..OPP

2. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1: Yes.

Relief:- The reference is answered in affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to issue no.1, the petitioner has examined two PWs in all. PW-1 Sh. Pramod Sarkek, Assistant Manager NJJV, Kotla has stated that the petitioner had joined the respondent as Time Keeper vide appointment letter Ex. PW-1/A. EX and PW1/1 to Ex.PW1/42 are the salary certificates of the petitioner for the period of February 1994 to July, 1997 and Ex. PW1/43 is the leave record of the petitioner and representations Ex. PW1/44 and Ex. PW1/45 which were received from the petitioner and as such the petitioner worked w.e.f. February 1994 to July 1997 continuously.

9. PW-2 Rajesh Kumar has stated that he was engaged as Time Keeper at Kotla on 1.2.1994 vide appointment letter Ex. PA, who was posted at Daj sector where he worked till June, 1998 and then he was transferred to Wadhal where he worked till he was shifted to tunnel whose job was in the office and his leave was sanctioned by the Personnel Manager on prescribed performa application. He applied for the leave w.e.f 8th July 1997 to 12th July 1997 and on 13th July 1997 he was not allowed to join at Wadhal, who was directed to report at Kotla Office where termination letter was given to him but again stated that his termination was orally and then he made the representation to the authority on 15.7.1997 vide Ex. PB but no action on his representation was taken, who personally met the Personnel Manager Mr. Raghuvanshi, who told him that he cannot help at this stage and asked him to go to his house and they would call him as and when required. His last salary was Rs.5225/-, who had completed 240 days in a calendar and as such prayed for reinstatement with seniority.

10. To rebut the case of the petitioner, the respondent has examined Sh. Balwant Singh Assistant Personnel Department, NJJV, Delhi, who has stated that he is authorized to make the statement as per authority letter Ex. RA. He knows the petitioner, who was posted with him in the respondent company at Daj and the company was having eight sites where the work was going on and he also remained in personnel department. The petitioner was to be deputed for work on any site. No other RWs were examined by the respondent despite having afforded five opportunities to the respondent but without effect, hence the evidence of the respondent was closed by the order of the court vide order dated 1.8.2008.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it is clear that the petitioner is a permanent employee of the respondent, who had put in more than 3 ½ years of service preceding his termination. It is significant to note that the petitioner was transferred from Daj to Wadhal inside the tunnel knowing fully well that the petitioner was suffering from serious ailment of schizophrenia, who also requested the respondent management to shift him to some other site keeping in view his ailment but without effect, who joined at Wadhal on 27.6.1997 and again he was directed to report at Kotla office where he was terminated from service without assigning any reason. It is borne out from the appointment letter Ex. PA that he was appointed as Time Keeper by the Nathpa Jhakri J.V on 1.2.1994, who also made representation against his termination in writing vide letter Ex. PB. The petitioner was disbars salary vide pay slips vide Ex. PW-1/1 to Ex. PW-1/43. It is significant to note that though Shri Balwant Singh Assistant Personnel Department NJJV Delhi appeared into witness box as RW-1, who has also placed on record the termination order of the petitioner Ex. RB before the termination of the petitioner. He has only stated that the petitioner was to be deputed for work on any eight sites nor he has stated that the petitioner was terminated from service. I have scrutinized the termination order Ex. RB of the petitioner, it is clear that no domestic enquiry was conducted by the respondent before terminating the services of petitioner nor obtained the opinion of the Medical expert about this serious ailment. Apart from it, no requisite notice of one month nor the compensation in lieu thereof was given to the petitioner at the time of termination of services of petitioner especially when the respondent has admitted in their reply and the statement that the petitioner

had put in continuous service of more than 3 ½ years with the respondent and obviously therefore the petitioner had completed more than 240 working days in every calendar year preceding his termination and no notice nor compensation nor any domestic enquiry was conducted to ascertain the serious disease suffering by the petitioner and whether it is curable or incurable disease and as such the termination of the petitioner is held illegal and improper without complying with the mandatory provisions of section 25-F of the Industrial disputes Act, 1947. Accordingly, issue no.1 is decided in favour and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 20th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN
Presiding Judge

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP.**

Ref No. 280 of 2003
Instituted on. 10.9.2003.
Decided on. 27.4.2009

Ramesh Chand s/o Shri Ishwar Singh 2. Tara Dutt, s/o Shri Amba Dutt c/o Shri J.C Bhardwaj, President, HPAITUC HQ Saprooon, Solan District Solan, HP.

..Petitioners

Versus

The Executive Engineer, HPSEB (Electrical) Division Saproon District Solan, HP.

..Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.C Bhardwaj, Ld. AR.
For respondent : Ms. Sharmila Patial, Ld. Csl.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the retrenchment of services of Shri Ramesh Chand S/o Shri Ishwar Singh and shri Tara Dutt S/o Shri Amb Dutt, daily wages workmen w.e.f. 26.5.2000 by giving ten days notice by the Assistant Executive Engineer (Electrical) Sub division no.3 HPSEB Solan is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. The petitioners have filed a claim asserting therein that Ramesh Chand was employed in the month of August, 1999 and Tara Dutt was employed during the year 1997 and as such both remained till 26.5.2000 and then they were removed from service despite the fact that their services continued for the purpose of section 25-B of the Act and as per the Certified Standing Orders of the Board, the petitioners have attained temporary status in the employment and as such their services cannot be terminated without serving notice or payment in lieu of that as no notice nor

compensation was paid to the petitioners and that the services of the junior workmen were retained by the respondent while retrenching the services of petitioners which is violation of section 25-G of the Industrial disputes Act, 1947 and that the petitioners were retrenched for the purpose of section 2-oo of the Act which is bad in law for non compliance of certified standing orders of the Board and that the retrenchment of the petitioners were also violative and discriminatory under Articles 14 & 16 of the Constitution of India and that sudden retrenchment of the petitioners have made their integrity doubtful in the eyes of one and all as they are unemployed since the date of illegal retrenchment and that the right of livelihood its continuity, better, proper and healthy service conditions are recognized basic rights as per the precedent set by the Hon'ble Supreme Court and as such prayed for reinstatement in service with seniority and continuity alongwith full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioners, which filed reply interalia raising preliminary objections of maintainability and that there exists no cause of action in favour of the petitioners and against the respondent and that the claim petition is bad for non joinder or misjoinder of necessary party. On merits, it is denied that the workman Ramesh Chand was employed in the month of August, 1999. It is contended that the petitioners were engaged by the respondent as daily rated beldar w.e.f. 26.2.1998 and 28.9.2997 respectively and as such worked with the respondent till 25.5.2000 and during this period, the petitioners did not work continuously, who have not completed 240 days in any calendar year. It is denied that the petitioners were removed illegally from service on 26.5.2000. It is contended that the petitioners were engaged for specific work and after the completion of the work both the petitioners were served with ten days notice as per provisions of Standing orders, copies of which are annexure C & D and the services of the petitioners were terminated according to the provisions of Standing Orders as well as the provisions of Industrial Disputes Act and that no junior to the petitioners were retained by the respondent, hence there was no violation of section 25-G of the Act and as such prayed for the dismissal of the claim of the petitioner.

4. No rejoinder filed. The following issues were framed by this Court on 26.10.2005 on the pleading of the parties.

1. Whether the retrenchment of service of S/Shri Ramesh Chand and Tara Dutt by Assistant Executive Engineer, Electrical Sub Division Solan is illegal? If so, its effect?
..OPP
2. If issue No.1 is proved in affirmative, whether the petitioners are entitled for the relief claimed?
...OPP
3. Whether the petitioners have no cause of action?
..OPR
4. Whether the petition in the present form is not maintainable?
...OPR
5. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue no.1	No.
Issue no.2	Not entitled to any relief.
Issue no.3	No.
Issue no.4	No.
Relief	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No-1:

7. Coming to this issue, the petitioners have examined PW-1 Shri Ramesh Chand, who has stated that he was engaged by the respondent during Feb. 1998 and worked till May, 2000, who was removed from service in May, 2000. No notice nor compensation was given to him and his juniors S/Shri Suresh and Sanjay were retained.

8. To rebut the case of the petitioners, the respondent has examined Er. Vijay Kochhar has stated that the petitioner was engaged as daily paid beldar on 26.2.1998, who continued as such till 25.3.1998, who was reengaged on 26.9.1999 and continued as such till 31.12.1999, who was again engaged on 1.1.2000 to 25.5.2000 for 134 days against different works of the Sub Division, who has not completed 240 working days in any calendar year preceding his termination.

9. The case of the petitioners is that they being the daily wages beldars having worked for more than 240 working days in every calendar year preceding their termination and their termination without notice and compensation is illegal and as such they are entitled to be reinstated in service with seniority and continuity along with back wages.

10. On the contrary, the respondent contends that the petitioners were engaged against specific work and for specific period and after the completion of the work the services of the petitioners were termination by giving 10 days notice as per Standing Orders of the Board, hence the petitioners are not entitled to any relief as prayed by them.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it remains a fact that the petitioner Shri Ramesh Chand was engaged in the year 26.2.1998, who worked with the respondent w.e.f. 26.2.1998 to 25.3.1998 for 28 days, who was reengaged w.e.f. 26.9.1999 to 31.12.1999 and worked for 93 days, who was again engaged on 1.1.2000 and worked till 25.5.2000 for 134 days as is evident from annexure R-1 placed on record which was not disputed by the parties. Whereas petitioner no.2 Shri Tara Dutt was engaged on 26.9.1997, who worked w.e.f. 26.9.1997 to 25.11.1997 for 45 days, 27.1.1998 to 25.3.1998 for 56 days, 7.10.1999 to 31.12.1999 for 82 days and 1.1.2000 to 25.5.2000 for 135 days as per mandays chart annexure R-2 placed on record which is also not disputed. Now, it is clear that the petitioners have failed to prove on record that they have completed 240 working days in a calendar year preceding their termination which is the basic requirement of seeking protection under section 25-F of the Industrial Disputes Act, 1947 and as such the petitioners are not entitled for the protection of Section 25-F before their services were terminated. Here I am fortified with a view taken by their lordship of Hon'ble Supreme Court in AIR 2006 S.C. 110 case titled as Surindernagar District Panchyat V/s Dayabhai Amar Singh in which it was held that:—

“In case workman claims to have worked for more than 10 years as daily wager—Apart from oral evidence workman has not produced any evidence to prove fact that he has worked for 240 days---No proof of receipt of salary or wages or any record or order in that regard was produced: no co-worker was examined; muster roll produced by employer has not been contradicted—Workman has failed to discharge his burden that he was in employment for 240 days during preceding 12 months of date of termination of his service—Workman not entitled for protection of Section 25-F before his service was terminated.”

Now, turning to the legal aspect of the case, it is also the case of the petitioners that the respondent has violated the provisions of Rule 14 (ii) of Standing Orders of HPSEB as no notice was given to them before their termination. On the other hand, the respondent has stated that they have served a ten days notice to the petitioners before their removal and even if the plea of the petitioners are taken into consideration even then it is well settled by our own Hon'ble High Court that no notice was required to be given to the petitioner by HPSEB even if the employment is below 240 days, as it was held in Executive Engineer Joginder Nagar & Sanju S/O Sh. Gantu Ram, Vill Dalana, P.O. Ballhjoli, Tehsil. Jogindernagar, Distt. Mandi H.P. & Presiding Officer, Labour Court-Cum-Industrial Tribunal, Dharamsala in CWP No. 1383 of 2005 in which it was held that :—

“The HP State Electricity Board shall be exempted from all the provisions of standing Orders Act, and thereafter no 10 days notice is required to be given under Standing Orders to the employee. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.”

And as such, the petitioners are not entitled to any service benefits as they have failed to prove that they had worked for 240 days in a preceding year before their termination.

13. Now, adverting to the other contention raised by the petitioners that the respondent retained their juniors in the service when their services were terminated. I find no force in this contention as the petitioners have failed to prove on record as to when their juniors joined the services of respondent Board as daily wages beldar and they are still continuing in service and even no record from the respondent was summoned by the petitioners to prove that their juniors are still working with the respondent Board and as such this contention is not proved on record, hence not accepted.

14. Thus, having regard to entire evidence on record and in view of above cited rulings, it can safely be concluded that the services of petitioner S/Shri Ramesh Chand and Tara Dutt daily wages workmen w.e.f. 26.5.2000 by giving ten days notice is not illegal, improper and unjustified. Accordingly, issue no. 1 is decided in favour of respondent and against the petitioners.

Issue No.2:

15. Since I have held under issue no.1 above, that the services of the petitioners have not been illegally terminated by the respondent, hence the petitioners are not entitled to any relief. Accordingly, this issue is decided in favour of the petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent being the legal issue. Since the petitioners have challenged their termination by raising Industrial Dispute, hence I hold that the petitioners have enforceable cause of action to file this petition, hence this issue is decided in favour of petitioners and against the respondent.

Issue No.4:

17. In support of this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, I find nothing wrong with this petition which is perfectly maintainable in the present form. Accordingly, issue no.4 is decided in favour of the petitioners and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue No. 1 to 4 above, the claim of the petitioners fails and is hereby dismissed and as such the reference is ordered to be answered in negative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of April, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA, HP.**

Ref no. 7 of 2003.
Instituted on. 10.1.2003.
Decided on. 6.4.2009.

General Secretary Ozone Pharmaceuticals Pvt. Ltd. through its president Shri Sukh Dev s/o Shri Sita Ram and General Secretary Shri Joginder Singh s/o Shri Hari Ram R/o Village Jatti Majra, P.O Lodhimajra, Tehsil Nalagarh, District Solan, HP.

.....Petitioner

Vs.

M/s Ozone Pharmaceuticals Pvt. Ltd. Village Katha Nera, Lakkar Depot. Baddi, District Solan HP.

....Respondent

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri Dinesh Bhanot, Ld. Csl.
For respondent: Shri Rajiv Sharma, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the demands raised by the Ozone Pharmaceuticals Karamchari Sangh Village Katha, P.O Baddi Distt. Solan HP vide their demand notice dated 26.4.2001 and 11.5.2001 (copies enclosed) to the management of M/s Ozone Pharmaceuticals Ltd. Katha, near Lakkar Depot. Baddi, District Solan, HP are proper and justified? If not, what relief of service benefits the concerned workmen are entitled to?”

2. The petitioner has filed a claim asserting therein that they were offered appointment by the respondent as workmen in different years and that the petitioners performed their duties to the entire satisfaction of the respondent as workmen without any complaint against them till their illegal termination by the respondent on 3.4.2001 and that the services of the workmen were terminated without assigning any reason and without giving any show cause notice which is illegal and that on 3.4.2001, forty five workmen were not allowed to enter the factory premises without any show cause and were terminated but later on fifteen workmen were taken back by the respondent on duty and that the respondent has terminated the services of the petitioners in a slip shod manner without affording an opportunity of being heard without conducting any enquiry and that the termination of the services of the petitioners also amounts to unfair labour practice and that the termination order is bad in the eyes of law and is being punished for no fault and as such prayed for reinstatement with retrospective effect with back wages, seniority, continuity in service, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability and that the petitioners are not the workmen of the respondent company, reference is not legal and that the claim petition is not based upon real facts and the claim petition of the petitioners is bad for non joinder of necessary party. On merits, it is denied that the petitioner were the workers of the respondent company. It is contended that the petitioners were working under contractor and the contractor entered into an agreement with the respondent company for the supply of labourers as and when required by the respondent company vide agreement dated 11.9.2000 and the contractor started the supply of workers on contract basis w.e.f. 1.10.2000 and the contractor was not working as per the satisfaction of the management, who was terminated by the respondent management w.e.f. 31.3.2001 and when the respondent denied to take the workers of the contractor inside the industrial unit of the company, the petitioners indulged in illegal activities and the question of show cause notice or one month notice does not arise as the petitioners were never engaged by the respondent at any point of time and as such prayed for the dismissal of the claim as prayed for.

4. No rejoinder filed. The following issues were framed by this Court on 8.3.2006.

1. Whether the Karmchari Sangh Union is entitled for any service benefits or not?

...OPP

2. Whether the present petition is not maintainable?

...OPR

3. Relief.

5. I have heard the Ld. Counsels for the parties and have also gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:—

Issue No.1	Not entitled to any relief.
Issue No.3	Yes.
Relief.	Reference answered in negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

7. Coming to issue no.1, the petitioner has examined PW-1 Shri Joginder Singh, who has stated that he was posted as helper in the respondent company, who was engaged in August, 1998, who was appointed by Shri M.S

Kashyap (Personnel Manager). Their union was having 45 workers, who were removed from service and about 10-15 people were taken back by the company and all the workers appointed by Mr. M.S Kashyap. Their union was registered on 15.3.2001 as per letter mark X and the information regarding union was given to the company as per mark Y. After formation of the union, he was not permitted to enter the factory as the gate was closed/locked on 2nd April, 2001. No notice nor compensation was given to him and all the workers were engaged by the company and their presence was marked by the company and as such prayed for reinstatement. In cross-examination, the witness has admitted that the petition is not signed by him or by any other workers and they have not given any authorization to their Advocate and they have disclosed all the facts which he narrated to the Advocate before filing the claim. The witness has admitted his signatures on Ex. R-1 to Ex. R-5 at point A to E against serial nos. 1 to 10 and no ESI card was prepared. It is denied that Madan Soin Labour contractor is their employer. It is admitted that Mr. M.S Kashyap has not given any appointment letter. It is also denied that all the workers were engaged by Madan Soin and they are not entitled to maintain the reference.

8. To rebut the case of the petitioner, the respondent examined RW-1 Shri Sabha Kant Tripathi, who has stated that the petitioners were working with the contractor Madan Soin, who was having the licence from the Labour Department of Himachal Pradesh, who was deducting the ESI and EPF from the labourers salary and proved the pay slips of all the workers Ex. R-6 to Ex. R-15. The copies of wages and salary register are Ex. R-1 to Ex. R-5 and Ex. R-16 to Ex. R-30 and the ESI contribution return is Ex. R-31 and the wages of all the workers were paid by the Labour Contractor in their presence. They terminated the services of the contractor from 1.4.2001 and the copy of reply filed before the Conciliation Officer is Ex. R-32. The petitioners threatened the employees of the company after the termination of contractor's agreement. They informed the Police as per letter Ex. R-33 and the offer letter to the contractor is Ex. R-34 and the termination of the contractor is Ex. R-35. In cross-examination, the witness has denied that letter Ex. R-5 has not been sent to the contractor and all the workers, who were reengaged through contractor, were not reengaged. It is admitted that with the termination of the contractor, his workers stood terminated. It is also denied that all the workers were the employees of the company.

9. The case of the petitioners is that they were the employees of the respondent company, whose services were illegally terminated by the company without following the mandatory provisions of Industrial Disputes Act, 1947 and as such demand raised by them in their demand charter is legal and justified.

10. On the contrary, the respondent contends that the petitioners were not the employees of the company as they were engaged through contractor, who were never engaged by the company. Moreover, the respondent company entered into an agreement with the labour contractor (Madan Soin) for the supply of labourers as and when required by the company and as such the petitioners are not entitled to any relief as prayed by them in their demand charter.

11. I have considered the respective contention of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, it stands proved on record that the petitioners were engaged in respondent company through contractor as is evident from Ex. R-31. It is significant to note that PW-1 Joginder singh Negi has admitted that he was not given any appointment from Shri M.S Kashyap, Personnel Manager of Ozone Pharma Pvt. Ltd. which goes to show that the petitioners were not the employees of the respondent company at any point of time, who were engaged by the respondent through labour contractor (Madan Soin) as is evident from ESI return submitted by Madan Soin contractor Ex. R-31 placed on record and also from the payment of wages register of Madan Soin contractor Ex. R-1 to R-30 which clearly shows that the petitioner worked with Madan Soin contractor, who were never engaged by the respondent company. Here I am fortified with a view taken by their lordship of **Hon'ble Supreme Court incase titled as Steel Authorities of India Ltd. Vs. National Union Water Front Workers as reported in 2001 (7) SCC-1** in which it was held that: —

" Where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is prohibited either because industrial adjudicator/court ordered abolition of contract labour or because the appropriate government issued notification under section 10 (1) of the CLRA Act, 1970, there can be no automatic absorption of the contract labour in the establishment. The Court will have to consider the question whether the contract labour was engaged or a mere ruse/camouflage to avoid giving the workmen benefits under various labour legislation. If contract not found to be genuine, contractor labour to be treated as employees of the principal employer but where contract to engage contract labour is genuine, valid and as per law, the contract worker will not be the employees of the principal employer."

In the instant case, the respondent has proved on record that the contract to engage the petitioners being the contract labour is genuine, valid and as per law as is evident from the payment of wages register Ex. R-1 to R-30 and further ESI contribution return of the petitioner and obviously therefore, I have no hesitation in coming to the conclusion that the petitioners being the contract labour are not the employees of the principal employer i.e respondent

company and as such the demands raised by the petitioner vide their demand notices dated 26.4.2001 and 11.5.2001 to the management of the respondent company are not proper and justified especially when the petitioners are not the employees of the respondent company. Accordingly, the issue is decided in favour of respondent and against the petitioners.

Issue No.2:

13. In support of this issue, the respondent has proved on record that the petitioners were not engaged by the respondent company, who were engaged through labour contractor (Madan Soin), hence the reference is not maintainable as the petitioners were not the employees of the respondent company. Moreover, the appropriate government sent the reference on the basis of demand raised by the petitioner but there is no demand charter on record which could show that the demand raised by the petitioners are genuine and legal. The petitioners have failed to prove on record that they were on the roll of the respondent company at any point of time. Even PW-1 has nowhere stated in his deposition that he was authorized to make the statement on behalf of the workers union. There is nothing on record which could show that the PW-1 was authorized to make the statement before this Court on behalf of the workers union and as such it is clear that PW-1 is not competent to make the statement on behalf of the petitioner Karamchari Sangh. It is well settled **incase titled as Karan Singh Vs. Executive Engineer, Haryana State Marketing Board as reported in 2007 LLR 1233**, in which it was held that:—

“Jurisdiction for industrial tribunal for adjudication of industrial disputes is limited to the terms of the reference as made by the appropriate government for adjudication.”

Since no demands vide the demand notices dated 26.4.2001 and 11.5.2001 have not been proved on record by the petitioners Karamchari Sangh, hence it can safely be concluded that the present petition is not maintainable being not against the respondent company as the petitioner Karamchari Sangh workmen were held to be the contract labour of Shri Madan Soin contractor and not of the respondent company. Accordingly, issue no.2 is decided in favour of respondent and against the petitioners Karamchari Sangh.

Relief:

As a sequel to my above discussion and findings on issue no.1 & 2, the claim fails and is hereby dismissed and as such the reference is answered in negative. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA, HP.**

Ref no. 225 of 2003.
Instituted on. 18.8.2003.
Decided on. 6.4.2009.

Surinder Kumar S/o Shri Bhoop Ram Sharma R/o Village Tapakari, P.O Okhroo, Tehsil & District Shimla, HP.

.....Petitioner

Vs.

1. The Executive Engineer, HPSEB Division Sunni, Tehsil Sunni, District Shimla, HP.
2. The Divisional Officer, HPSEB Sub Division Dhami, District Shimla, HP.

...Respondents.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri J.R Sharma, Ld. Csl.
For respondent: Shri Bhagwan Chand, Ld. Csl.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“क्या श्री सुरेन्द्र कुमार पुत्र श्री भूपराम दैनिक भोगी कामगार को नियोक्ता अधिशासी अभियन्ता, हि० प्र० राज्य विद्युत परिषद् मण्डल सुन्नी, जिला शिमला द्वारा दिनांक 25-12-98 को औद्योगिक विवाद अधिनियम, 1947 की अनुपालना किये बिना नौकरी से निकाला जाना व उससे कनिष्ठ मूल राज व अन्य 15 को नौकरी पर रखना उचित व न्यायसंगत है ? यदि नहीं, तो उक्त कामगार किन सेवा लाभों व राहत का हकदार है ?”

2. The petitioner has filed a claim asserting therein that he was initially engaged as beldar on daily wages basis in December, 1991 with the respondent board, who continued to work with certain artificial and fictional breaks with the intention and motive to deprive the petitioner from continuing 240 days in 12 calendar months and that earlier the petitioner was engaged in respondent Board HPSEB Sub Division, Shimla which was later on changed into newly created Division in Jan. 1998 and that since the initial date of his appointment, the petitioner was discharging his duties to the best of his ability, sincerity, honesty as well as to the utmost satisfaction of his superiors but to the utter surprise of the petitioner that on 25th Jan. 1999, the respondent orally terminated the services of the petitioner without any reason and that the petitioner made various requests to the respondent for reengagement but in vain and number of junior persons are working with the respondent and that the respondents have acted with malafide intention in dealing with the case of the petitioner and the respondent terminated the services of the petitioner in an unlawful manner without complying with the well settled position of law as well as their Standing Orders Act, 1946 and that the action of the respondent is totally illegal, arbitrary, discriminatory, un-constitutional and is violative of the provisions of section 25-B of the Industrial Disputes Act, 1947 and as such prayed for reinstatement in service with seniority, continuity alongwith back wages, hence this claim.

3. The respondents resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections of maintainability and that the petitioner has no locus standi to file the claim against the respondent and the claim is barred by section 11 of CPC. On merits, it is contended that the petitioner was initially engaged as beldar on daily wages basis in December, 1991. It is denied that the certain artificial and fictional breaks affected by the respondent itself with the intention and motive to deprive the petitioner from continuing 240 days as the petitioner was engaged for specific work as and when available. It is also denied that the services of the petitioner were orally terminated by the respondent, who was engaged w.e.f. 10.12.1991 to 25.12.1998 with certain breaks and that the petitioner has suppressed the material facts from the Court as the petitioner assailed his termination before the Administrative Tribunal in the year 1997 which was dismissed on merits on 27.7.2000, copies of which are annexures R-2 and R-3. It is denied that number of junior persons were working with the respondent and that the petitioner filed the demand notice on the false grounds and the petitioner is not entitled to any relief and as such prayed for the dismissal of the claim as prayed for.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 08.11.2004.

1. Whether the termination of petitioner by respondent without complying the provisions of Industrial Disputes Act, 1947 and retaining junior persons Shri Mool Raj and fifteen others in service is just and legal?
...OPP
2. If issue no.1 is proved, to what relief of service benefits, the petitioner is entitled?
...OPP
3. Whether there is no cause of action and the claim is not maintainable as alleged in preliminary objection no.1?
...OPR
4. Whether the petitioner has no locus standi to file the petition as alleged?
...OPR
5. Whether the claim is barred under section 11 of CPC?
...OPR
6. Relief.

6. I have heard the learned counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing issues for determination my findings on the aforesaid issues are as under.

Issue no.1	Yes.
Issue no.2	Entitled for reinstatement in service alongwith seniority and continuity but without back wages.
Issue no.3	No.
Issue no.4	No.
Issue no.5	Not applicable.
Relief.	Reference answered in affirmative per operative part of award.

REASONS FOR FINDINGS.

Issue No.1:

8. Coming to issue no.1, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent w.e.f. December, 1991 as daily rated beldar and continued as such upto 25.1.1999. No notice nor compensation was given to him at the time of his retrenchment, who has completed 240 days in a preceding 12 months. Junior persons are still working with the respondent. He has requested for his reengagement but in vain and the work is still available with the respondent and as such prayed for reinstatement with all consequential benefits.

9. To rebut the case of the petitioner, the respondents examined RW-1 Er. J.K Sharma, who has stated that worker Surinder Kumar was working under Dharni Electrical Sub Division w.e.f. 26.11.1991 to 25.12.1998, who remained absent from duty due to non availability of work and the petitioner was engaged for digging pits for erection of electrical poles and carrying of material to the construction site and proved the detail of total days of the petitioner Ex. RW-1/A and the respondent has not terminated the services of the petitioner.

10. The case of the petitioner is that he was engaged as daily wages beldar by the respondent and his termination without complying the mandatory provisions of Industrial Disputes Act, 1947 is illegal and even juniors to him are still continuing with the respondent department and as such he is entitled to protection of section 25-F, 25-G & H of the ID Act, 1947.

11. On the contrary, the respondents contend that the petitioner was engaged for specific period and for specific work, who was never terminated by the respondent but on the completion of work, his services automatically came to an end. However, no juniors to the petitioner are retained by the respondents.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it stands proved on record that the petitioner has not completed 240 working days in any calendar year preceding his termination as is evident from detail of total number of days Ex. RW-1/A placed on record. The petitioner has failed to prove on record that he has completed 240 working days in any calendar year preceding his termination.

14. Now adverting to the other aspect of the case, the petitioner has specifically stated in his deposition that the respondents had retained junior persons in service, who are still continuing with the respondents. On the other hand, the respondents have examined RW-1 Er. J.K Sharma, who has admitted that the seniority of daily wagers are maintained at Division level but he could not tell the seniority list which was shown to him in the Court. It is significant to note that when he was put as to whether Mool Raj & fifteen Ors. are juniors to the petitioner, he could not give any satisfactory reply and has stated that he cannot say about it, who has further admitted that he does not know much about the case and his Junior Engineer is well conversant with the facts of the case as the petitioner had worked under him. It is worth while to note that the Junior Engineer of the respondent who was well conversant with the facts of the case and was the best witness to throw light on the seniority list of the petitioner and other workers who could tell whether Mool Raj & fifteen others are the juniors to the petitioner and are continuing with the respondent was purposely and intentionally withheld by the respondents as the respondents closed its evidence on the same day without examining him and obviously therefore, the adverse inference can safely be drawn against the respondent for not examining the Junior Engineer well conversant with the case and for not producing the relevant record of seniority of workmen in this case. Since the persons junior to the petitioner have been retained by retrenching the petitioner, the petitioner is entitled to protection under section 25-G of the Act even though he had not completed 240 working days preceding a block of

12 calendar months at the time of his retrenchment. Here I am fortified with a view taken by *Hon'ble Supreme Court incase titled as Central bank of India Vs. S. Satyam & Ors. as reported in (1996)5 SCC 419.* in which it was held that:—

“Chapter V-A deals with all retrenchments while section 25-F is confined only to the mode of retrenchment of workman in continuous service for not less than one year. Section 25-G prescribes the principle for retrenchment and applied ordinarily, the principle of “last come first go” which is not confined only to workman who have been in continuous service for not less than one year covered by section 25-F.”

Similarly our own *Hon'ble High Court in CWP no. 555 of 2007 dated 12.9.2007 incase titled Vijay Kumar Vs. The Executive Engineer and Anr.* has held that: —

“even the workman has not completed 240 days in a block of 12 calendar months at the time of his retrenchment. The employer had retained the persons junior to the petitioner, thus violating the provisions of section 25-G of the Act.

Thus on the strength of the above cited rulings, and having regard to the entire evidence on record, it can safely be concluded that the petitioner though has not completed 240 working days in a block of 12 calendar months at the time of his retrenchment but the respondents have engaged and retained Mool Raj & fifteen others juniors to the petitioner and as such violated the provisions of section 25-G of the Act, and obviously therefore, the termination of the petitioner by respondent without complying the provisions of Industrial disputes Act, 1947 and retaining juniors S/Shri Mool Raj and fifteen others in service is wrong and illegal. Accordingly, issue no.1 is decided in favour of the petitioner and against the respondent.

Issue No.2:

15. Since I have held under issue no.1 above, that the termination of service of petitioner is not just and legal by retaining junior persons and as such, the petitioner is ordered to be reengaged in service forthwith with seniority and continuity. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his retrenchment. Accordingly, issue no.2 is decided in favour of petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable and the petitioner has enforceable cause of action against the respondents. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

Issue No.4:

17. In order to prove this issue, no evidence was led by the respondent nor it was pressed during the course of arguments. However, it remains a fact that the petitioner was terminated from service and the petitioner being aggrieved and deprived from service has got the locus standi to file this petition. Accordingly, issue no.4 is decided in favour of petitioner and against the respondent.

Issue No.5:

18. In support of this issue, no evidence was led by the respondent. However, I have scrutinized the record of the case and observed that there is no limitation under the Industrial Disputes Act, 1947 and section 11 of CPC is not applicable under ID Act, 1947. Moreover, it is well settled that the Administrative Tribunal is having no jurisdiction to try and decide the matter under the Industrial Disputes Act, 1947. Accordingly, I hold this issue is decided in favour of the petitioner and against the respondents.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 5, the claim of the petitioner succeeds and is hereby allowed and as such the reference is answered in affirmative and the petitioner is ordered to be reinstated in

service forthwith with seniority and continuity in service. However, the petitioner is not entitled to back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 6th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

**IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT SHIMLA.**

Ref No: 35 of 2005.
Instituted On: 16.5.2005.
Decided On: 30.4.2009.

Jagat Singh s/o Shri Jhandu Ram R/o Village Rampur Jattan, P.O. Kala Amb District Sirmour H.P. & 17 others workmen.

..Petitioner

Versus

The owner of M/s Surya Patteries, Kala Amb, District Sirmour, H.P.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner: Shri Niranjana Verma, Ld. Csl.

For respondent: Respondent already exparte.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the termination of services of Shri Jagat Singh & seventeen others workmen (list enclosed) by the management of M/s Surya Patteries, Kala Amb, District Sirmour, H.P. w.e.f. 5.9.2003 as alleged by the workmen without complying with the provisions of Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation, the above aggrieved workmen are entitled to?”

2. The petitioner Jagat Singh and seventeen others had filed a claim asserting therein that they were engaged by the respondent in different years from 1988 to 1997 and all the petitioners continuously worked with the respondent uptill 2003 when their services were terminated and all the petitioners were drawing different salaries, who have completed 240 days of uninterrupted service with the respondent and they were verbally terminated by the respondent without complying with the provisions of Industrial Disputes Act, 1947 and that the respondent engaged fresh hands which clearly shows that the termination of all the petitioners is bad in law, hence the petitioners prayed for their reengagement in service with all consequential service benefits, and as such this claim.

3. The respondent was properly served through RAD but did not put in appearance, hence proceeded against exparte.

4. I have heard the Ld. Counsel for the petitioner and also gone through the record of the case.

5. In order to prove their case, the petitioners have examined five PWs in all. PW-1 Shri Jagat Singh stepped into witness box, who has stated that he was engaged as moulder by the respondent in March, 1988 where he remained

till August, 2003. He alongwith seventeen persons were engaged by the respondent, who are Sarvshri Gain Chand, Nagesh Kumar, Jaman Singh, Om Parkash Someshwar Parsad, Alok Kumar, Satywan, Sher Singh, Ramji Dass, Jaswant Singh, Mohan Lal, Rakesh Kumar, Pawan Kumar, Mastana, Hem Raj and Naseeb. They filed a demand charter to the respondent in which the Labour Inspector tried conciliation which was compromised but not executed and subsequently, the respondent terminated their services. The copy of compromise is mark A. They had completed more than 240 working days in each calendar year preceding their termination. They also subscribed to ESI. No notice nor compensation was given to them at the time of termination and as such prayed for their reinstatement in service alongwith all consequential benefits including back wages.

6. PW-2 Shri Gain Chand (Electrician), PW-3 Shri Hem Raj (Plater), PW-4 Shri Om Parkash (Welder) and PW-5 Shri Mehar Chand (Incharge painting and decoration) have corroborated the statement of PW-1 Shri Jagat Singh.

7. I have heard the Ld. Csl for the petitioners and have gone through the record of the case.

12. After the close scrutiny of the record of the case and inview of unrebutted exparte evidence on record, I am satisfied that the petitioners were engaged by the respondent in different categories of workmen in March, 1988 and on other different dates till August, 2003 and their services were orally terminated by the respondent without any notice nor paid any compensation. It is also borne out from the record that the petitioners had put in 240 working days in every calendar year preceding their termination and obviously therefore, I have no hesitation on the basis of unrebutted exparte evidence on record in coming to the conclusion that the termination of Shri Jagat Singh and seventeen others by M/s Surya Patteries, Kala Amb District Sirmour, HP, respondent without complying with the provisions of Industrial Disputes Act, 1947 is improper and unjustified and as such the petitioners Sarvshri Jagat Singh, Gain Chand, Nagesh Kumar, Jaman Singh, Om Parkash Someshwar Parsad, Alok Kumar, Satywan, Sher Singh, Ramji Dass, Jaswant Singh, Mohan Lal, Rakesh Kumar, Pawan Kumar, Mastana, Hem Raj and Naseeb are held entitled for their reinstatement with seniority and continuity in service. However, the petitioners are not entitled to back wages as they have not placed any material on record to substantiate that they were not gainfully employed after their termination. Accordingly, the claim of the petitioners succeeds and is hereby allowed exparte, hence the petitioners are ordered to be reinstated in service forthwith with seniority and continuity in service but they are not entitled to back wages as they have not placed any material on record to substantiate that they were not gainfully employed after their termination and as such the reference is ordered to be answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 30th day of April, 2009 in the presence of petitioners counsel and the parties.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA, HP. AT CAMP COURT NAHAN

Ref no. 43 of 2006.
Instituted on 7.4.2006.
Decided on. 23.4.2009.

The General Secretary, Ministerial Staff Union, Nahan Foundry, Nahan, District Sirmour, HP.

..Petitioner.

Vs.

The Executive Engineer, HPPWD & IPH State Workshop (Nahan Foundry) Nahan, District Sirmour, HP.

..Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri A.K Gupta, Ld. Csl.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

“Whether the demand raised by the General Secretary, Ministerial Staff Union, Nahan Foundry, Nahan before the Executive Engineer, HPPWD & IPH State Workshop (Nahan Foundry), Nahan that Shri Prem Pal Singh Daftri be either promoted as canteen salesman or clerk in the pay scale of Rs. 950-1800/- w.e.f. 1.10.1988 is legal and justified? If yes, to what designation, grade and relief the concerned workman is entitled to? If not, its legal effect?”

2. The petitioner has filed a claim asserting therein that the petitioner joined as peon in the Nahan Foundry Ltd. Nahan in the year 1977, who was under matriculate and later on the petitioner did matriculation in the year 1980, who represented to the higher authorities for promotion to the grade of clerk but his representation was turned down on the ground that the post was not available and the petitioner was promoted as Assistant Canteen salesman in the year 1987 in the pay scale of 210-290/- which was applicable to the then semi skilled categories and that if the Nahan Foundry would be in existence by now, then the petitioner had further chance of his promotion as canteen salesman but the Nahan Foundry was taken over by the HPPWD and IPH departments in the year 1980 on account of various administrative reasons and the terms and conditions of taken over clearly mentioned that the service conditions would not be varied to the disadvantage of the employees taken over from the Nahan Foundry Ltd. Nahan and as such the petitioner was to be given the equivalent post and his promotion channel should also have been opened to him and that the petitioner could not be denied the promotion in the higher grade in view of the terms and conditions of taken over and the respondent has misinterpreted the terms and conditions debarring the petitioner from further promotion and that the petitioner is entitled to higher grade of Rs. 950-1800 with initial start of Rs. 1000 w.e.f. 1.10.1988 as the grade has been given to all other similarly situated persons in the semi skilled category and that not to promote the petitioner to the higher grade after rendering a long service is basically violative of the principles of service jurisprudence and the petitioner cannot be denied the promotion and as such prayed for promotion to the higher post of clerk from the due date with all consequential benefits including full back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply inter alia raising preliminary objections that the petition is bad for non joinder of necessary parties and the petitioner had initially served with Nahan Foundry Ltd. Nahan which was later on taken over by the HPPWD & IPH workshop Nahan Foundry, Nahan on 1.10.1988 and the services of the petitioner alongwith others employees were taken over by the respondent and that the petitioner was appointed on the casual basis by the Management of Nahan Foundry Ltd. Nahan after completion of three years as casual peon, who was absorbed in the regular category of peon in the pay scale of Rs. 196-232 vide office order dated 8.7.1980 and that the petitioner was under Matric at the time of his appointment as casual peon, who submitted an application alongwith Matriculation certificate with the request to consider his case favourably against the vacant post of store packer, who was promoted to the post of Assistant Canteen Salesman w.e.f. 1.6.1987 vide office order dated 18.8.1987 in the pay scale of Rs. 210-290/- and that the Nahan Foundry Ltd. Nahan alongwith the petitioner were taken over by the HPPWD & IPH State Workshop Nahan on 1.10.1988 as per terms and conditions prescribed by the HP Govt. vide notifications dated 23/27.12.1989 and the petitioner opted the HP pay scales, who was redesignated as Daftri and put in the corresponding pay scale of Rs. 810-1440/- vide office order dated 15.5.1990. On merits, it is contended that the Nahan Foundry Ltd. Nahan was converted into a departmental workshop of PWD/IPH w.e.f. 1.10.1988 under the prescribed terms and conditions of taken over and the petitioner opted to come over to PWD Department with his then designation and corresponding pay scale and the petitioner was put in the corresponding HP Pay scale of Rs. 810-1440/- and as such the petitioner was entitled to the HP pay scale linked benefits as per the Govt. rules, the petitioner was also given the benefits of assured career progression scheme as applicable to other government employees which was not available to the petitioner during the service of Nahan Foundry Ltd. and that the pay scale of Rs. 950-1800/- with initial start of Rs. 1000/- w.e.f. 1.10.1988 is meant for clerical category for which the petitioner is not entitled and that the petitioner is not entitled for promotion on the basis of long service rendered by him and as such prayed for the dismissal of the claim as prayed for.

4. No rejoinder filed. The following issues were framed by this Court on 22.6.2007.

1. Whether the demand raised by the petitioner is legal? If so, its effect?

..OPP

2. Whether Shri Prem Pal Singh is entitled for the revision of pay scale w.e.f. 1.9.1988? If so, its effect?

..OPP

3. Whether the present petition is not maintainable and is barred by limitation?

..OPR

4. Relief.

5. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

6. For the reasons to be recorded hereinafter while discussing issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	No.
Issue no. 2	Not entitled.
Issue no.3	Partly yes partly no.
Relief.	Reference answered in
	Negative per operative part of award.

REASONS FOR FINDINGS

Issue No.1&2:

7. Both these issues are taken up and discussed together being interlinked and interconnected for sake of convenience and to avoid repetition. Coming to these issues, the petitioner has examined himself as PW-1, who has stated that he was employed as peon in Nahan Foundry in 1976 on casual basis, who was made regular in 1980 and in the year 1987, he was appointed as Assistant Salesman, who had passed matric in 1980 and since he improved his qualification, hence he was promoted in 1987 and then the Nahan Foundry, Nahan was converted into HPPWD and IPH workshop w.e.f. 1.10.1988 and the terms and conditions were settled at that time, who was made Daftri in 1988 whereas he was entitled to be promoted as Clerk as other workers were absorbed in equivalent post and even a matriculate is entitled to be promoted as clerk under the rules and the promotion to his category is mark P-2 and the persons mentioned in the list given in mark P-2 are junior to him.

8. To rebut the case of the petitioner, the respondent has examined RW-1 Shri A.K Nanda, Supdt. HPPWD, Nahan Foundry has stated that the petitioner was engaged as peon in 1980 in the scale of Rs. 196-232, who passed matriculation examination during service, who was promoted in 1987 as an Assistant Canteen Salesman and on 1.10.1988, Nahan Foundry merged into HPPWD and then the petitioner gave his option to accept HP pay scales and there was no designation of Assistant Canteen Salesman in HP, who was given the designation of Daftri in the same pay scale and in the year 1996, the petitioner requested the department to promote him as a clerk, which was rejected by the XEN in view of the terms and conditions of taken over of Nahan Foundry, Nahan and the petitioner was given all benefits of ACP and the Nahan Foundry was given separate cadre by the State Government of which no R & P rules have been framed and the order vide which the petitioner was appointed as peon is Ex. RA, who passed the matriculation vide Ex. RB and the terms and conditions of Nahan Foundry is Ex. RC and the option given by the petitioner is Ex. RD and the request for promotion is Ex. RE whose application was rejected vide Ex. RF.

9. The case of the petitioner is that he being the employees of HP State Govt. is entitled for promotion as clerk in the pay scale of Rs. 950-1800/- w.e.f. 1.10.1988.

10. On the contrary, the respondent contends that the petitioner was not entitled for his promotion as no R&P Rules have been framed by the government, who was designated as Daftri in the same pay scale whose request for promotion has been rightly rejected by the respondent in terms and conditions of taken over of Nahan Foundry, Nahan.

11. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

12. After the close scrutiny of the record of the case, though the petitioner claims his promotion as a clerk but he has not proved on record the promotional channel vide which he can also be promoted as a clerk. It is significant to note that the petitioner has opted for HP pay scales at the time of taken over of Nahan Foundry, Nahan by the HPPWD/IPH Workshop in 1.10.1988 and there is no provision for promotion of petitioner as Clerk or Canteen Salesman being the dying cadre of Nahan Foundry, Nahan nor the petitioner could place any material on record which could show that the petitioner is entitled to be promoted as a Clerk of Canteen Salesman. In view of no such evidence on record and having regard to the fact that there is dying cadre in Nahan Foundry, Nahan having no promotional channel to the workmen of the said Foundry Nahan, hence it can safely concluded that the demand raised by the petitioner Prem Pal singh is not legal and justified and as such the petitioner is not entitled for the revision of his pay scale w.e.f. 1.9.1998 being not entitled to the same as he failed to prove on record as to how he is entitled for the same. Accordingly, both these issues are decided against the petitioner and in favour of respondent.

Issue No.3

13. In support of this issue, no evidence was led by the respondent being the legal issue. However, I find nothing wrong with this petition which is perfectly maintainable. Moreover, I have also observed that there is no

limitation under the I.D Act as it was held by their lordship of *Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another.* in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that this petition is not barred by limitation. Accordingly, issue no.3 is partly decided in favour of petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 3, the claim of the petitioner fails and is hereby dismissed and as such the reference is answered in negative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today this day of 23rd April 2009 in the presence of parties counsels at camp court Nahan.

(Parveen)

J.S MAHANTAN.
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT SHIMLA.

Ref No: 26 of 2005.
Instituted On:5.3.2005.
Decided On: 27.4.2009.

Dina Nath s/o Shri Jodha Mull R/o Village Bihal P.O & Tehsil Karsog, District Mandi, HP.

...Petitioner

Versus

The Executive Engineer, I & PH Division, Sunni, District Shimla, HP.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri S.S Sippy, Ld AR.
For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received for adjudication by this Court from the appropriate government:—

“Whether the contention of the Executive Engineer, I&PH, Division Sunni, district Shimla, HP that workman Shri Dina Nath S/o Shri Jodha Mull has left the job w.e.f. 8.5.1991 at his own due to his illness is legal and justified? If not, what relief of service benefits and amount of compensation Shri Dina Nath is entitled to?”

2. The petitioner has filed a claim asserting therein that he was appointed as chowkidar on daily wages by the employer on 9.9.1978 in section Banot, Sub Division Kumarsain but the employer engaged him as beldar on

1.1.1979 and worked upto 30.6.1987, who was promoted as pump operator on 1.7.1987 and continued to work as such regularly upto 7.5.1991 and that the employer verbally terminated the services of the petitioner on 8.5.1991 without any reason, charge sheet and notice and even Satish Kumar has been appointed in his place, who is still continuing and that the petitioner requested the Assistant Engineer for reengagement but to no avail and that the petitioner is still under medical treatment since 6.11.1991 and the copy of medical certificate is annexure II and that the termination of the petitioner w.e.f. 8.5.1991 is illegal as no notice was served upon him nor wages of one month have been paid to him which renders his termination illegal, void and bad under section 25-F of the Industrial disputes Act, 1947 and that no seniority was maintained before affecting termination and the management had retained the juniors to him in service, who are still continuing with the respondent and that he had put in more than 240 days of continuous service in each completed year and as such prayed for reinstatement with full back wages and continuity of service, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of time barred and that the petitioner has not come to the Court with clean hands and that the petitioner had filed the petition before the Administrative Tribunal on similar grounds which was dismissed on 13.8.1997. On merits, it is contended that from the month of March, 1991 the petitioner left the job and did not turn up thereafter and that the services of the petitioner were never terminated by the respondent, who left the job and did not turn up and as such the respondent to engage another person duly qualified by making requisition through Employment Exchange to run the uninterrupted supply of water to the general public. It is contended that the petitioner filed the petition before the Administrative Tribunal after lapse of five years whose petition has been dismissed vide order dated 13.8.1997 and as such prayed for the dismissal of the claim petition.

4. In the rejoinder, the petitioner controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 4.8.2005.

1. Whether the petitioner has left the job at his own will due to his illness as alleged by the respondent w.e.f 8.5.1991 is legal and justified?

...OPR

2. If issue no.1 is not proved, to what relief of service benefits and compensation, the petitioner is entitled to?

...OPP

3. Whether the petition is not maintainable being time barred as alleged?

...OPR

4. Whether the petition is barred by resjudicata?

...OPR

5. Relief.

6. I have heard the Ld. Counsels for the parties and have gone through the record of the case.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under.

Issue no.1.	No.
Issue no.2.	Entitled for reinstatement with seniority and continuity but without back wages.
Issue no.3.	No.
Issue no.4.	No.

REASONS FOR FINDINGS

Issue No.1:

8. In order to prove issue no.1, the respondent has examined two RWs in all. RW-1 Shri Harjinder Singh, Supervisor has stated that he was posted as Supervisor in IPH Division at Kotgarh in 1985 and remained there till 2000. The petitioner was engaged as pump operator on daily wages in Sub Division Kotgarh w.e.f. 1.7.1987, who remained posted till march, 1991. The petitioner abandoned the job in 1991 and the petitioner was called by him for the work but the petitioner did not return to his duties, who told that he was having work at his house and was not interested to do work in the department.

9. RW-2 Er. Naval Kishore, has stated that the petitioner was engaged as chowkidar, beldar and pump operator, who remained as pump operator since July, 1987 to March, 1991, who left the job of his own, who never approached the department for his reengagement, who was requested to resume his duties by the Supervisor RW-1 and the petitioner filed a case before Administrative Tribunal which was dismissed per order Ex. RW-2/A and the petitioner filed the writ petition which was dismissed vide order Ex. RW-2/B. The petitioner abandoned the job of his own. No notice nor compensation was given to the petitioner by the department as he abandoned the job.

10. To prove the case, the petitioner has examined himself as PW-1, who tendered his affidavit Ex. PA in his evidence stating therein that he was appointed as chowkidar on daily wages by the employer on 9.9.1978 in section Banot Sub Division Kumarsain and then he was engaged as beldar on 1.1.1979 and worked upto 30.6.1987 and then he was promoted as pump operator on 1.7.1987 and continued to work as such upto 7.5.1991, who has not left the job of his own. No enquiry, charge sheet and show cause notice was issued to him, who was terminated on 8.5.1991 and Shri Satish Kumar was engaged in his place, who is still continuing with the respondent and that the petitioner fell ill and remained under treatment in IGMC, Shimla w.e.f. 11.6.1991 to 25.3.1992, who could not able to attend to his duties for this period and then he was not allowed to continue and as such his termination from service w.e.f. 8.5.1991 is illegal as no notice was served upon him and even the respondent retained the junior to him, who are still continuing with the respondent. He has completed more than 240 days of continuous service in each completed year.

11. The case of the petitioner is that he was engaged by the respondent as Chowkidar/beldar and then he was promoted as pump operator, who remained sick w.e.f. 11.6.1991 to 25.3.1992 and after fitness, he reported for duties but the respondent did not allow him to join his duties and even junior to him Shri Satish Kumar is still working with the respondent and as such he is entitled for his reinstatement in service with all consequential benefits including back wages.

12. On the contrary, the respondent contends that the services of the petitioner never terminated by the respondent, who left the job of his own without intimation to the department, hence the petitioner is not entitled to any relief as prayed by him.

13. I have considered the respective contention of both the parties and have scrutinized the record of the case.

14. After the close scrutiny of the record of the case, it is clear that the petitioner remained under treatment in IGMC, Shimla w.e.f. 11.6.1991 to 25.3.1992 but the respondent instead of allowing him to resume his duties keeping in view his sickness for a long time of nine months, terminated the petitioner from service without conducting any enquiry, notice nor paid compensation. It is well settled that Even when the workman remained absent, failed to report for duty it was imperative to follow the principles of natural justice by giving the opportunity. The reliance is placed on judgment incase titled as *M/s Scooters India Ltd. Vs. M.Mohammad Yaquab as reported in 2001 LLR 54 SC.*

Moreover, it stands proved on record that the petitioner remained under treatment for pulmenry tuberclosis in IGMC, Shimla w.e.f. 11.6.1991 to 25.3.1992 and as such prevented from attending to his duties. No doubt, the respondent tried to establish on record that the petitioner was called by the Supervisor RW-1 Harjinder singh for the work but the petitioner did not turn up, who replied him that he was having work at his house and not interested to do work in the department. RW-2, Naval Kishore, JE IPH Kotgarh has also corroborated the statement of RW-1 but it remains a fact that both these witnesses could not place on record any correspondence of the department which could show that any notice or letter was sent to the petitioner by the respondent to resume his duties at any point of time. Moreover, no witness was examined in order to show that in whose presence the petitioner refused to resume his duties by stating that he had a sufficient work at his home and he did not want to resume his duties nor any domestic enquiry was conducted against the petitioner by the respondent. In any case even when a workman fails to report for duties. The employer cannot presume that the workman has left the job without conducting a domestic enquiry against himd and as such it was imperative to follow the principle of natural justice by giving the opportunity of being heard to the petitioner before terminating his services. However, it is well settled in *State of HP & Others Vs. Bhatag Ram & Another as reported in latest HLJ 2007 (HP) 903* in which it was held that:—

“Plea of abandonment of job- merely raising the plea of abandonment is nothing but has to be established on the basis of facts. No facts led to substantiate the plea.”

Thus, having regard to no such evidence on the issue of abandonment, it can safely be concluded that the petitioner has not left the job of his own. Accordingly, the issue is decided in favour of petitioner and against the respondent.

Issue No.2:

15. Since I have held under issue no.1 that the petitioner has not left the job of his own, who was orally terminated by the respondent department without holding any enquiry nor an opportunity of being heard was given to

the petitioner by the respondent to follow the principles of natural justice, hence the petitioner is held entitled for reinstatement with seniority and continuity in service. However, the petitioner is not entitled for back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Accordingly, issue no.2 is decided in favour of the petitioner and against the respondent.

Issue No.3:

16. In support of this issue, no evidence was led by the respondent as to how the petition is not maintainable being time barred. However, it is well settled by the **Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing –cum- processing Service Society Limited and Another.** in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the petitioner is maintainable as not time barred. Accordingly, issue no.3 is decided against the respondent and in favour of the petitioner.

Issue No.4:

17. In support of this issue, no evidence was led by the respondent being the legal issue. It is well settled that the Code of Civil Procedure is not applicable under the Industrial Disputes Act, 1947 and this act is a welfare legislation and moreover I have gone through the orders of the Administrative Tribunal placed on record dated 13.8.1997 and Sep. 16.1998 and it is well settled that the Administrative Tribunal is having no jurisdiction to decide the cases under the Industrial Disputes Act, 1947 and even if there is any such order, it will not affect the merits of this case being the orders without jurisdiction. Accordingly, this issue is decided holding that the petition is not barred by principle of resjudicata in favour of the petitioner and against the respondent.

Relief:

As a sequel to my above discussion and findings on issue no. 1 to 4 above, the claim of the petitioner succeeds as the completion of 240 working days in every calendar year preceding his termination is not disputed and as such is hereby allowed, accordingly, the reference is ordered to be answered in affirmative and the petitioner is ordered to be reinstated in service forthwith with seniority and continuity in service. However, the petitioner is not entitled for back wages as he has not placed any material on record to substantiate that he was not gainfully employed after his termination. Let a copy of this award be sent to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th day of April, 2009 in the presence of parties counsels.

(Parveen)

JAGMOHAN SINGH MAHANTAN,
Presiding Judge.

IN THE COURT OF JAGMOHAN SINGH MAHANTAN, PRESIDING JUDGE, INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, SHIMLA, HP.

Ref no. 190 of 2002.
Instituted on 21.6.2002.
Decided on. 27.4.2009.

Parma Nand S/o Shri Dantu Ram R/o Village Sunarli, P.O Bour, Tehsil Chopal, District Shimla, HP.

...Petitioner.

Vs.

...Respondent.

Reference under section 10 of the Industrial Disputes Act, 1947.

For petitioner : Shri S.S Sippy, Ld. AR.

For respondent : Shri Jagdish Kanwar, Ld. DDA.

AWARD

1. The following reference has been received from appropriate government by this Court for adjudication:—

‘कि क्या अधिशासी अभियन्ता, सिंचाई एवं जन स्वास्थ्य मण्डल नेरवा, तहसील चौपाल, जिला शिमला द्वारा श्री परमानन्द सपुत्र श्री डांटू राम कामगार द्वारा दिनांक 26-6-96 से स्वयं नौकरी छोड़ी गई समझा जाना उचित एवं न्याय संगत है ? अगर नहीं, तो श्री परमानन्द सपुत्र श्री डांटू राम कामगार किस वरिष्ठता, सेवा लाभ एवं राहत का पात्र है ?

2. The petitioner has filed a claim asserting therein that he was appointed as daily paid beldar by the respondent on 26.4.1995, who continued as such till 25.6.1996 and then he was terminated on 26.6.1996 without any reason, notice and charge sheet and being aggrieved from it, other workers filed a writ petition before the Hon'ble High Court and the Court ordered for their reinstatement but the respondent only reinstated Shri Mohan Lal and the order of the Hon'ble High Court is annexure P-1 and that the employer has not complied with the orders of the Hon'ble High Court and then the petitioner and Kali Ram raised this issue before this Court but the respondent reengaged only Kali Ram leaving him aside, who requested the respondent time and again for reinstatement but of no use which is unfair labour practice and even his juniors S/Shri Roshan Lal Kali Ram, Padam Singh, Kundan Singh, Bhagat Singh, Hoshiar Singh, Mohan Singh and Kirat Singh are still working with the respondent and the respondent has also appointed some more new workers and that the respondent has not followed the principle of last come first go and as such his termination is illegal as no notice nor compensation was paid to him at the time of termination and that no seniority was maintained before effecting termination and that no charge sheet, enquiry and show cause notice was served upon him before his termination and as such prayed for reinstatement in service alongwith back wages, hence this claim.

3. The respondent resisted and contested the claim of the petitioner, which filed reply interalia raising preliminary objections of maintainability, abandonment, estoppel and barred by resjudicata. On merits, it is contended that the petitioner was employed as daily paid beldar on 26.4.1995 to 25.2.1996 for 211 days, who did not work for 240 days in a calendar year, who left the job of his own volition and that the Hon'ble High Court vide its order dated 15.10.1996 in CWP no. 1017/96 titled Kali Ram and others Vs. State, dismissed the petition as withdrawn. However, the respondents were directed to treat this petition as representation and decide the same within three months. It is denied that the Hon'ble High Court has ordered their reinstatement and that S/Shri Roshan, Padam Singh, Kundan and Bhagat Singh continued working with the respondent department whereas the petitioner left the job of his own in 1996, hence these persons cannot be termed as junior to the petitioner and S/Shri kali Ram and Mohan Lal were reengaged in view of the orders of the Labour-cum-Conciliation Officer and Shri Hoshiar Singh was never employed with the respondent and shri Kirat Singh Chauhan was also not reengaged as an appeal of the state is pending before the Hon'ble High Court against the order of this Court and that the petitioner has never completed 240 days in a calendar year and as such prayed for the dismissal of the claim as prayed for.

4. In the rejoinder, the petitioner has controverted the assertions made in the reply and reaffirmed and reiterated the averments of the petition.

5. The following issues were framed by this Court on 10.3.2005.

1. Whether the petitioner has left the job at his own w.e.f. 26.6.1996 as alleged?

...OPP

2. If issue no.1 is not proved, to what relief of service benefits including seniority and compensation, the petitioner is entitled to?

...OPP

3. Whether the petition is not maintainable for non joinder of necessary parties?

...OPR

4. Whether the petitioner is estopped to file the claim as alleged in preliminary objection no.3? ...OPR
5. Relief.
6. I have heard the Ld. AR for petitioner and Ld. DDA for respondent and have gone through the record of the case.
7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes.
Issue no. 2	Not entitled to any relief.
Issue no.3	No.
Issue no.4	No.
Relief.	Reference answered in Affirmative per operative part of award.

REASONS FOR FINDINGS

Issue No.1:

8. Coming to this issue, the petitioner has examined himself as PW-1, who has stated that he was engaged by the respondent on daily wages on 26.4.1995 where he remained till 25.6.1996, who was removed from service by SDO on 26.6.1996. No notice nor compensation was paid to him at the time of his termination, who filed the case against the respondent before the Hon'ble High Court alongwith two other workers and as per direction, he was not given employment whereas two other workers have been engaged and then he approached the labour department, who had not abandoned the job of his own and even about eight junior persons to him are still working and as such prayed for reinstatement alongwith other benefits.

9. To rebut the case of the petitioner, the respondent has examined RW-1 Er. Nikka Ram has stated that the petitioner was engaged as beldar on 26.4.1995, who worked from 26.4.1995 to 25.9.1995 and from 26.12.1995 to 25.2.1996 and then the petitioner never returned to his duties. No notice has been given to the petitioner, who never approached the department for his reengagement and the petitioner alongwith two other persons filed the case before the Hon'ble High Court which was dismissed and the case was sent to conciliation officer and proved the mandays chart of the petitioner Ex. RA and as such the petitioner has no legal right for reengagement.

10. The case of the petitioner is that he being the daily wages beldar having worked for more than 240 working days in each calendar year and even junior to him are still working with the department and his termination without notice and without compensation is illegal and improper which is liable to be set aside by reinstating him in service alongwith all consequential benefits.

11. On the contrary, the respondent has controverted the case of the petitioner and has submitted that the petitioner has not completed 240 working days in any calendar year preceding his termination and no juniors to the petitioner are working with the respondent and therefore, the petitioner has no case for his reinstatement alongwith all consequential benefits in his favour.

12. I have considered the respective contentions of both the parties and have scrutinized the record of the case.

13. After the close scrutiny of the record of the case, it remains a fact that the petitioner has completed 211 days in a calendar year w.e.f. 26.4.1995 to 25.2.1996 which means that the petitioner has not completed 240 working days in a calendar year preceding his termination. Moreover, the petitioner has failed to prove on record that his juniors are still working with the respondent. It is significant to note that the petitioner has not examined any employee of the IPH Nerwa, Tehsil Chopal in order to show whether the workmen S/Shri Roshan Lal Kali Ram, Padam Singh, Kundan Singh, Bhagat Singh, Hoshiar Singh, Mohan Singh and Kirat Singh alleged by the petitioner are infact the juniors to the petitioner. In view of no such evidence on record to prove the seniority list of the workmen of IPH Nerwa Tehsil Chopal, it cannot be said that the abovenamed persons are the juniors to the petitioner. Apart from it, the respondent has proved on record that the petitioner has left the job of his own without intimation to the respondent department, who only put in 211 working days w.e.f. 26.4.1995 to 25.2.1996 and obviously therefore, no notice nor retrenchment compensation was given to the petitioner as the petitioner has failed to prove on record that he has completed 240 working days in a calendar year preceding his termination. There is nothing on record which could show that the petitioner ever approached the respondent department for his reengagement and in view of unrebutted evidence led by the respondent, it can safely be concluded that the petitioner has left the job of his own, who slept over the matter for

seven years, who awoke from his slumber in the year 2002 when he raised an Industrial Dispute and accordingly, I have no hesitation in coming to the conclusion that the petitioner Parma Nand left the job of his own on 26.6.1996, who did not complete requisite period of 240 days in a calendar year preceding his termination and as such this issue is decided in favour of the respondent and against the petitioner.

Issue No.2 :

14. Since I have held under issue no.1 above that the petitioner has left the job of his own having not completed 240 working days in a calendar year preceding leaving his job of his own, hence the petitioner is not entitled to any relief as claimed for. Accordingly, the issue is decided in favour of respondent and against the petitioner.

Issue No.3:

15. In support of this issue, no evidence was led by the respondent being the legal issue. I find nothing wrong with the petition which is maintainable nor it is bad for nonjoinder of necessary parties as the respondent failed to prove on record as to who are the other necessary parties left to be impleaded in the petition. Accordingly, issue no.3 is decided in favour of petitioner and against the respondent.

Issue No.4:

16. In support of this issue, no evidence was led by the respondent as to how the petitioner is estopped from filing the claim after the seven years. However, it is well settled by the Hon'ble Supreme Court as reported in (1999) 6 SCC 82 incase titled as Ajayab Singh Vs. Sirhind Co-operative Marketing -cum- processing Service Society Limited and Another. in which it was held that:—

“the provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceedings under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”

Thus, on the strength of this ruling, it can safely be concluded that the petitioner is not estopped from filing this petition after the period of seven years especially when the employer failed to prove the real prejudice cause to him. Accordingly, issue no.4 is decided against the respondent and in favour of the petitioner.

Relief:

As a sequel to my above discussion and findings on issue no.1 to 4, the claim of the petitioner fails and is hereby dismissed and as such the reference is answered in affirmative. Let a copy of this award be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced in the open court today on this 27th Day of April 2009 in the presence of parties counsels.

(Parveen)

J.S MAHANTAN,
Presiding Judge.

Ref. 58/2003

Sh Hukam Chand V/s Ex. Engg HPSEB, Parwanoo.

9.4.2009

Present:- None for the petitioner.
Shri Atul Jhingan, Ld. vice Csl. for respondent.

It is already 12:48 P.M. but no appearance has been put in by the petitioner. Be awaited.

By order,
Sd/-
Presiding Judge.

9.4.2009

Present:- None for the petitioner.
Shri Atul Jhingan, Ld. vice Csl. for respondent.

It is 4.28 P. M. Case called in the pre and post lunch sessions but none has appeared on behalf of the petitioner. It seems that the petitioner has no interest to pursue the case. Accordingly, the claim of the petitioner is dismissed and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced.

9.4.2009

By order,
Sd/-
Presiding Judge.

 Ref.59.2003

Sh Prem Chand V/s Ex. Engg HPSEB, Parwanoo.

9.4.2009

Present:- None for the petitioner.
Shri Atul Jhingan, Ld. vice Csl. for respondent.

It is already 12:48 P.M. but no appearance has been put in by the petitioner. Be awaited.

By order,
Sd/-
Presiding Judge.

It is 4.28 P. M. Case called in the pre and post lunch sessions but none has appeared on behalf of the petitioner. It seems that the petitioner has no interest to pursue the case. Accordingly, the claim of the petitioner is dismissed and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced.

9.4.2009

By order,
Sd/-
Presiding Judge.

 Ref. 60.2003

Sh Pyara Lal V/s Ex. Engg HPSEB, Parwanoo.

9.4.2009

Present:- None for the petitioner.
Shri Atul Jhingan, Ld. vice Csl. for respondent.

It is already 12:48 P.M. but no appearance has been put in by the petitioner. Be awaited.

By order,
Sd/-
Presiding Judge.

It is 4.28 P. M. Case called in the pre and post lunch sessions but none has appeared on behalf of the petitioner. It seems that the petitioner has no interest to pursue the case. Accordingly, the claim of the petitioner is dismissed and the reference is answered accordingly. Let a copy of this order be sent to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Announced.

9.4.2009

By order,
Sd/-
Presiding Judge.

HIGH COURT OF HIMACHAL PRADESH, SHIMLA – 171 001**NOTIFICATIONS***Shimla, the 1st July, 2009*

No.HHC/Admn.6(24)/74-Part.—The Hon'ble High Court of Himachal Pradesh, in exercise of the powers vested in it under sub sections (2) and (3) of Section 11 of the Code of Criminal Procedure, 1973 (Act No.2 of 1974) and all other powers enabling it in this behalf, has been pleased to appoint and confer the powers of Judicial Magistrate of the Second Class upon Ms. Neha Kaisth and Ms. Kanika Chawla, Civil Judges (Jr. Division) to be exercised by them within the local limits of the District mentioned against each, with effect from the assumption of charge.—

Sl. No.	Name of the Judicial Officer	Designation and place of posting	District
1.	Ms. Neha Kaisth	Civil Judge (Jr. Division)-cum-Judicial Magistrate (III), Ghumarwin.	Bilaspur
2.	Ms. Kanika Chawla	Civil Judge (Jr. Division)-cum-Judicial Magistrate (II), Rohru.	Shimla

The above named officers are further specially empowered to authorize the detention in Police custody in terms of Section 167(2)(c) of the Code of Criminal Procedure, 1973.

Shimla, the 1st July, 2009

No.HHC/Admn.6(24)/74-Part.—The Hon'ble High Court of Himachal Pradesh, in exercise of the powers vested in it under Sections 11 and 12 of the Himachal Pradesh Courts Act, 1976, has been pleased to appoint and confer the powers of Civil Judge (Jr. Division), upon Ms. Neha Kaisth and Ms. Kanika Chawla, Civil Judges (Jr. Division) to be exercised by them in original Civil Suits, the value of which does not exceed Rs.5,00,000/- within the local limits of the District mentioned against each, with effect from the assumption of charge.—

Sl. No	Name of the Judicial Officer	Designation and place of posting	District
1.	Ms. Neha Kaisth	Civil Judge (Jr. Division)-cum-Judicial Magistrate (III), Ghumarwin.	Bilaspur
2	Ms. Kanika Chawla	Civil Judge (Jr. Division)-cum-Judicial Magistrate (II), Rohru.	Shimla

By order,
Sd/-
Registrar General.

हिमाचल प्रदेश ग्यारहवीं विधान सभा

संख्या: वि०स०-विधायन-प्रा०/ 1-21/2008

दिनांक, शिमला-4 4-09-2009

अधिसूचना

राज्यपाल महोदया का निम्नलिखित आदेश दिनांक 4 सितम्बर, 2009 सर्वसाधारण की सूचनार्थ प्रकाशित किया जाता है :-

"मैं, प्रभा राव, राज्यपाल, हिमाचल प्रदेश, भारतीय संविधान के अनुच्छेद 174 (2) (ए) द्वारा प्रदत्त शक्तियों के अनुसरण में हिमाचल प्रदेश ग्यारहवीं विधान सभा के षष्ठम् अधिवेशन का तत्काल सत्रावसान करती हूँ ।

प्रभा राव,
राज्यपाल,
हिमाचल प्रदेश ।"

आदेश द्वारा :-

गोवर्धन सिंह,
सचिव,
हि० प्र० विधान सभा ।

No. V.S.-Legn.-Pri/1-21/2008

Dated, Shimla-171004, the

4th September, 2009

NOTIFICATION

The following order by the Governor of the State of Himachal Pradesh, dated the 4th September, 2009 is hereby published for general information :-

"मैं, प्रभा राव, राज्यपाल, हिमाचल प्रदेश, भारतीय संविधान के अनुच्छेद 174 (2) (ए) द्वारा प्रदत्त शक्तियों के अनुसरण में हिमाचल प्रदेश ग्यारहवीं विधान सभा के षष्ठम् अधिवेशन का तत्काल सत्रावसान करती हूँ ।

प्रभा राव,
राज्यपाल,
हिमाचल प्रदेश ।"

By Order :-

Goverdhan Singh,
Secretary,
H.P. Vidhan Sabha.

हिमाचल प्रदेश ग्यारहवीं विधान सभा

अधिसूचना

संख्या: वि0स0-विधायन-समिति गठन/1-15/2008

दिनांक: 26-08-2009

हिमाचल प्रदेश विधान सभा की प्रक्रिया एवं कार्य संचालन नियमावली, 1973 के नियम, 209 और 211 के अनुसरण में माननीय अध्यक्ष महोदय ने वर्ष 2009-2010 के लिए गठित सदन की समितियों में रिक्तियों को भरते हुये निम्नलिखित सदस्यों को समितियों का सभापति/सदस्य नामांकित किया है :-

1. लोक लेखा समिति

सदस्य का नाम	सभापति /सदस्य
1. श्री खीमी राम	सदस्य, नांमाकित किये ।
2. श्री नीरज भारती	सदस्य, नांमाकित किये ।

2. लोक उपक्रम समिति

1.	श्री हरि नारायण सिंह	सभापति, नांमाकित किये ।
2.	श्री सुभाष चन्द मंगलेट	सदस्य, नांमाकित किये ।
3.	डॉ राजीव सैजल	सदस्य, नांमाकित किये ।

3. कल्याण समिति

1.	श्री दिले राम	सभापति, नांमाकित किये ।
2.	श्री हीरा लाल	सदस्य, नांमाकित किये ।

4. अधीनस्थ विधायन समिति

1	श्री दिले राम	सदस्य, नांमाकित किये ।
2	श्री कुलदीप सिंह पठानिया	सदस्य, नांमाकित किये ।
3	श्री किशोरी लाल	सदस्य, नांमाकित किये ।
4	श्री देस राज	हटाये गये।
5	डॉ रामलाल मारकण्डा	हटाये गये।
6	श्री नीरज भारती	हटाये गये।

5. जन-प्रशासन समिति

1	श्री बलदेव शर्मा	सभापति, नांमाकित किये ।
2	श्री सुरेन्द्र भारद्वाज	सदस्य, नांमाकित किये ।
3	श्री हरि नारायण सिंह	हटाये गये।
4	श्री सुभाष चन्द मंगलेट	हटाये गये।

6. मानव विकास समिति		
1	श्री हरि नारायण सिंह	सदस्य, नांमाकित किये ।
2	डॉ रामलाल मारकण्डा	सदस्य, नांमाकित किये ।
3	श्री मुकेश अग्निहोत्री	सदस्य, नांमाकित किये ।
4	श्री नीरज भारती	सदस्य, नांमाकित किये ।
7. सामान्य विकास समिति		
1	श्री देस राज	सभापति, नांमाकित किये ।
2	श्री सोहन लाल	सदस्य, नांमाकित किये ।
3	श्री दिले राम	हटाये गये।
4	श्री हीरा लाल	हटाये गये।
5	डॉ राजीव सैजल	हटाये गये।
8. ग्रामीण नियोजन समिति		
1	श्री खीमी राम	सभापति, नांमाकित किये ।
2	श्री हर्षवर्धन चौहान	सदस्य, नांमाकित किये ।
3	श्री राकेश कालिया	सदस्य, नांमाकित किये ।
9. विशेषाधिकार समिति		
1	श्री जी०एस०बाली	सदस्य, नांमाकित किये ।
2	श्री नीरज भारती	हटाये गये।
10. पुस्तकालय तथा सदस्य सुविधा समिति		
1	श्री राकेश पठानिया	सदस्य, नांमाकित किये ।

सचिव,
हि०प्र० विधान सभा ।